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Forest
Service

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File Code: 1570-1/2200

Date: August 1, 2002

Kirsten Stade
Forest Guardians
312 Montezuma, Suite A
Santa Fe, NM 87501

**CERTIFIED MAIL – RETURN
RECEIPT REQUESTED**

Re: Appeal #02-03-00-0018-A215, Montana Allotment Decision, Nogales Ranger District,
Coronado National Forest

Dear Ms. Stade:

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 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,

ABEL M. CAMARENA
Appeals Deciding Officer
Deputy Regional Forester

Enclosure

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

REVIEW AND FINDINGS

of the

Forest Guardians Appeal

#02-03-00-0018-A215, Montana Allotment Decision

ISSUE 1: The Forest Service violated 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: The 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. Therefore, the decision is premature.

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).

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 decision is not premature.

ISSUE 2: The decision violates the Coronado National Forest Plan and the Regional Guide, by failing to manage riparian areas to achieve recovery.

Contention: The appellant asserts that the decision fails to make the health of riparian areas a priority and, in so doing, violates both the Forest Plan and the Regional Guide.

Response: The Regional Guide facilitated Forest Plan development. Requirements in the Regional Guide are reflected in the Forest Plan. There is no requirement for project-level compliance with the Regional Guide.

In addition, riparian condition was one of the key planning issues for this project (Doc. 63). The alternative selected will continue to provide the desired riparian improvement trends demonstrated on this allotment (Doc. 107).

Finding: Continued riparian improvement is ensured under this decision, and there is no violation of the Coronado National Forest Plan or the Regional Guide.

ISSUE 3: The decision violates the NFMA requirement to maintain viable numbers of all species.

Contention: The appellant contends the Forest Service must manage sensitive species to sustain viability and prevent the need for listing. In addition, the Forest Service must manage (fish and wildlife habitat) to maintain viable numbers. The appellant believes there is a lack of management for riparian habitat, and that the Forest Service must provide protection for riparian obligate species. In particular, the appellant believes that domestic livestock production threatens the viability of the Southwestern willow flycatcher, the Black hawk, the Mexican spotted owl, the Mexican garter snake, the narrow-headed garter snake, the Chiricahua leopard frog, and the Arizona southwestern toad. The appellant contends that only a cessation of grazing in these watersheds, combined with active restoration work, will adequately provide for the minimum habitat needs for these species.

Response: The Forest analyzed the effects that each alternative would have on sensitive species (Doc. 63; 71; 107) and found that the selected alternative would not reduce the viability of any of them. The selected alternative includes measures that will speed-up the recovery of riparian habitat within the allotment, even though the trend in riparian condition is upward under current livestock management (Doc. 63; 74; 107). Of the seven species of particular concern identified by the appellant, the Mexican garter snake, narrow-headed garter snake, and Arizona southwestern toad are not found on the Forest. No occupied or unoccupied suitable or potential habitat exists on the Montana Allotment for the Southwestern willow flycatcher, the common black hawk, or the Mexican spotted owl (Doc. 63; 71). Habitat does exist for the Chiricahua leopard frog (Doc. 71; 84). The US Fish and Wildlife Service agreed with the Forest's determination that the selected alternative would not jeopardize the continued existence of this species, proposed for listing under the Endangered Species Act (Doc. 84; 101).

Finding: Based on the review of the project record, the Forest did not violate the National Forest Management Act requirement to maintain viable numbers of all species.

ISSUE 4: Population survey data of Management Indicator Species (MIS) is needed to ensure the maintenance of minimum viable populations of wildlife.

Contention: The appellant asserts that since the Forest Service lacks quantitative inventory data on many, if not all, MIS in the planning area and the Forest as a whole, and the scant data that it does have indicates some species are declining, the agency's decision is arbitrary and capricious.

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.

ISSUE 5: The decision violates NFMA consistency and viability provisions by failing to adequately protect the Northern goshawk.

Contention: The allotment provides nesting or potential habitat for the Northern goshawk, yet fails to establish key foraging areas that limit utilization to an average of 20% and a maximum of 40%.

Response: The Montana Allotment does not contain occupied or unoccupied suitable or potential nesting, roosting, or brood-rearing habitat for the Northern goshawk, although it may be used by Northern goshawks migrating through the area to their wintering grounds (Doc. 71).

Finding: The decision is consistent with NFMA consistency and viability provisions for the Northern goshawk.

ISSUE 6: The Montana Allotment's term permit issuance must be suspended until the Coronado National Forest revises its land and resource management plan and until the Forest Service develops a renewable resources program.

Contention: The appellant contends, "... there is no legally adequate RPA program or land and resource management plan to which the Montana term grazing permit issuance project can be tiered."

Response: There are no statutes or regulations that describe an expiration date for the Forest Service Renewable Resource Program or Land and Resource Management Plans. 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 7: 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 appellant contends that the range of alternatives is inadequate. However, the appellant does not describe where inadequacies exist in the range, nor offer alternatives that would better define the range. Review of the project record indicates that the interdisciplinary team did review scoping comments, and these were used to develop the range of alternatives (Doc.s. 9, 18, 22,

23). In addition, a range of alternatives was developed based on significant issues identified for the project and on the purpose and need for the action (Doc.s. 25, 31, 54, 63, pages 5-10). The range of alternatives consisted of alternatives considered in detail, as well as alternatives considered but not fully developed (Doc. 63, pp. 7-10).

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

ISSUE 8: The Forest Service violated NEPA because the EA fails to consider and disclose adequately the location and protocol for monitoring key forage utilization areas within the allotment.

Contention: The appellant contends the EA must disclose the names, locations, forage utilization limits, and monitoring protocol for each and every key area within the allotment.

Response: Proper forage utilization standards are employed to sustain such things as plant health and vigor, long-term soil productivity, and protection for threatened, endangered, and sensitive species and their habitats. Forage utilization levels are determined based on guidelines set out in the R-3 Allotment Analysis Handbook (FSH 2209.21). This handbook specifically describes appropriate forage utilization levels recommended for the purpose of improving rangeland condition. The Southwestern Region's Rangeland Management Specialists, Ecologists, and other scientists have developed these guidelines over a period of 50 years.

Forage utilization is measured by key area on key forage species within various pastures encompassing a grazing allotment. Key areas are locations readily accessible to water and forage and are located on level to intermediate slopes. Key species are herbaceous and woody vegetation that domestic livestock prefer at any given time of the year. By monitoring key areas, the Forest Service can ensure that an allotment, or pastures within an allotment, is not overgrazed.

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. The administrative record documents the selection process for key areas (Doc. 73). Key species for the uplands are sideoats and hairy gramma. Key species for riparian areas are deergrass and woody riparian species.

Finding: Utilization standards for the Montana Allotment were developed in accordance with Forest Service Policy. There is nothing in federal statutes, regulations, or Forest Service policy that requires the Responsible Official to disclose the names and locations of each and every key area within an allotment in an EA. As the selected alternative is implemented, all monitoring information will be available to the public.

ISSUE 9: The Forest Service violated NEPA by failing to consider and disclose the cumulative impacts of the proposed action.

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, “the EA contains virtually no analysis of cumulative effects...”

Response: Cumulative effects analysis must consider past, present, and reasonably foreseeable actions, as well as the proposed action, in order to determine whether these actions result in significant effects which require the preparation of an environmental impact statement.

A review of the project record indicated that analyses of cumulative effects, including discussions on the past, present, and reasonably foreseeable projects that contribute to cumulative effects, are displayed in resource specialists’ reports (Doc.s. 11, 13, 83). Cumulative effects are summarized for the resources in the Chapter 3 of the environmental assessment.

Finding: The record includes consideration of past, present, and reasonably foreseeable actions and their cumulative effects on the components of the human environment. The cumulative effects analysis is adequate for an informed decision and for the purpose of determining significance and whether an EIS is needed.

ISSUE 10: The EA violates the Clean Water Act.

Contention: The appellant contends that the Forest Service failed to require the grazing permit applicant to obtain water quality certification from the State of Arizona.

Response: The State of Arizona does not require water quality certification for dispersed non-point activities such as livestock grazing. However, the record shows that the appropriate non-point source pollution considerations, which include Best Management Practices, were made during the planning process (Doc. 63, 107). Maintenance of water quality at its current satisfactory level was identified as a project objective (Doc. 63). In addition, the alternative selected responds to the water quality maintenance objective through management changes that will further positive effects on ground cover, reduced erosion, and protection of riparian areas (Doc. 107).

Finding: Appropriate procedures were followed and adequate mitigation is planned for the project area. There will be no violation of the Clean Water Act.

ISSUE 11: 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 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 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 12: 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 project record indicates that the allotment is in fair to good condition, and is improving (Doc. 50; 63, p. 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.