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Forest
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File Code: 1570-1/2200

Date: August 1, 2002

Michael J. Van Zandt
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221 Main Street, Sixteenth Floor
San Francisco, CA 94105-1936

**CERTIFIED MAIL – RETURN
RECEIPT REQUESTED**

Re: Appeal #02-03-00-0023-A215, Montana Allotment Decision, Nogales Ranger District,
Coronado National Forest

Dear Mr. Van Zandt:

This is my review decision concerning the appeal you filed on behalf of your clients James K., Jr., and Susan E. Chilton 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: Christina Gonzalez, David M Stewart, Mailroom R3 Coronado

REVIEW AND FINDINGS

of the

Chilton Appeal

#02-03-00-0023-A215, Montana Allotment Decision

ISSUE 1: The decision allows a sliding scale from 300 to 500 cow/calf pairs.

Contention: The appellants contend that although drought conditions may reduce numbers on a temporary basis, the permit should authorize the maximum number of pairs to be stocked on the allotment so that the permittees may plan ahead for the future of their cattle operation.

Response: Precipitation in the southwestern United States is very unpredictable. For example, since 1995, the State of Arizona has been experiencing a drying trend, with the Standardized Precipitation Index (SPI) varying between near normal and moderately dry. However, with very few exceptions, during the past year, the SPI has dropped to extremely dry within all climatic divisions at some time or other. This is exemplified by the extreme fire behavior this season and the need to totally de-stock many grazing allotments in central Arizona. Additionally, meteorologists are not optimistic the current drying trend will end anytime soon.

NEPA decisions that are written very narrowly do not provide the flexibility to adjust to climatic variations in the southwestern United States. NEPA decisions that do not provide flexibility can be outdated within a very short time and subject to reanalysis with a new decision and/or legal challenge. A range of permit numbers does not preclude running higher numbers during periods of high precipitation, but it allows Forest Officers to adjust management based on changing conditions on the ground. In the Decision Notice and Finding Of No Significant Impact, the Responsible Official states, “Another objective I had was to make an ‘adaptive’ decision that had the flexibility to adjust livestock management and stocking levels cooperatively with the permittee to account for the inherent annual climatic variability (primarily, rainfall amount and pattern), which results in fluctuation in forage production that is common to the Montana area.” (Doc. 107). Additionally, the range of numbers in the decision is consistent with the animal months grazed in recent years, 400-500 head (Doc. 45; 63).

Finding: The Responsible Official made a reasonable decision by selecting a range of numbers.

ISSUE 2: The decision relies on the use of one key site to establish when the utilization rate has been exceeded.

Contention: The appellants contend the use of one key site is not representative and places the rancher in an impossible situation. The appellants say, “The Chilton’s extensive scientifically sound monitoring of their pastures far surpasses the tiny sample envisioned by the Deciding Officer and provides a much higher level of reliability and accuracy.”

Response: Forage utilization is measured within key areas on key forage species within various pastures on a given 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 that are representative of larger land areas, the Forest Service can ensure that an allotment or pastures within an allotment are not overused. Sufficient sites are sampled to provide a clear picture of the use that has occurred. Establishment of key areas is consistent with the Region 3 Range Analysis and Management Guide, FSH 2209.21. In addition, the Responsible Official's decision documents that the key areas were selected consistent with the management guidelines found on page 22 in the Coronado Land and Resource Management Plan (LRMP). Furthermore, the Responsible Official states, "Pasture-wide utilization levels will also be monitored with the objective of managing the entire pasture, not just the key areas." (Doc. 107). Key areas will be established annually with the permittee during development of annual operating instructions (Doc. 63).

The Forest Service is encouraging permittees to become more involved in allotment monitoring. In recent years, Region 3 has utilized monitoring data gathered by University Extension Services, Experimental Ranges, private range consultants, and the other entities. Due to many demands on Forest Service financial and human resources, the Forest Service is interested in utilizing data gathered by third parties. In these situations, it is essential that the Forest Service be involved in determining what the monitoring need is and in establishing a proper monitoring protocol to satisfy that need. The Responsible Official recognized this in his decision, where he states, "The Nogales District Range Staff Officer and the permittee will be responsible for monitoring livestock use to assure that use levels stay below 45%." The Responsible Official also said the decision "provides a basis for sharing responsibility for successful implementation of this decision with the permittee." (Doc. 107). The record demonstrates that if the permittees' present monitoring data meets pre-determined protocol, the Forest Service will certainly accept that information for consideration, along with monitoring data collected by Forest Service personnel.

Finding: The Responsible Official's decision is consistent with the LRMP and Forest Service policy and procedures. The decision also provides the opportunity for the permittees to share the responsibility for ensuring utilization standards are met.

ISSUE 3: The decision makes the permittees responsible for cattle that drift between pastures.

Contention: The appellant contends this is an unfair burden on the permittees, and it should be recognized that they do not have control over access by anyone else to the allotment.

Response: The Secretary of Agriculture regulations at 36 CFR 222.1 authorize the Chief of the Forest Service to develop, administer, and protect rangeland resources and to permit and regulate the grazing use of all classes of livestock on all National Forest System lands and other lands under Forest Service control. This section of the regulations also allows the Chief to re-delegate this authority. Under the authority of 36 CFR 222.3(c)(vi), the Chief is directed to prescribe provisions and requirements under which authorized term grazing permits will be administered. Part 2, Section 8(a) states, "The allotment management plan for the land described on page 1,

Part 1, is a part of this permit, and the permittee will carry out its provisions, other instructions, or both as issued by the Forest officer in charge for the area under permit....” Part 2, Section 8(d) of all term grazing permits states, “The permittee will allow only the numbers, kind, and class of livestock on the allotment during the period specified in Part 1 hereof, or the annual Bill for Collection...If livestock owned by the permittee are found to be grazing on the allotment in greater numbers, or at times or places other than permitted in Part 1 hereof, or specified on the annual Bill for Collection, the permittee...may face suspension or cancellation of this permit.” Part 2, Section 8(i) states, “This permit is issued and accepted with the provision that the permittee will maintain all range improvements...that are assigned for maintenance to standards of repair, orderliness, and safety acceptable to the Forest service....”. In other words, under the terms and conditions of the term grazing permit, it is the permittee’s responsibility to maintain pasture fences and ensure that permitted cattle are grazing according to annual operating instructions issued by the Responsible Official.

Finding: It is a permittee’s responsibility to control their livestock. An undue burden has not been placed on the permittees.

ISSUE 4: The decision misuses Mearns’ quail as an indicator species.

Contention: The appellants contend that recent studies conducted by Bristow and Ockenfels indicate quail populations in grazed areas appear to be higher than the population in ungrazed areas. The appellants say that the study undercuts any assertion that moderate grazing as practiced by them negatively impacts the Merans’ quail. The appellants contend that the decision seeks to use the quail as an indicator species and that the references to Mearns quail as an indicator species for impacts due to cattle grazing appear to be misplaced.

Response: The Mearns quail is identified in the Coronado Forest Land and Resource Management Plan as a management indicator species in three categories: species needing herbaceous cover, game species, and special interest species. The reasons this species was selected as a management indicator species are: It inhabits high quality grasslands in encinal oak habitats, and it is dependent upon good grass cover during the nesting season. Moderately heavy grazing destroys needed nesting cover, resulting in the disappearance of the birds (Doc. 106).

Finding: The selected alternative correctly identifies the Mearns quail as a management indicator species. Not to include it for this allotment, as the appellants contend, is contrary to Forest Land and Resource Management Plan Standards and Guidelines.

ISSUE 5: The decision improperly incorporates a five-year review and an unappealable mandatory reduction of permitted use in the presence of stable range conditions.

Contention: The appellant contends that there is no factual connection between future range conditions and specific mandatory modifications to utilization levels and numbers of livestock selected in advance. The appellant argues the decision is arbitrary and without due process.

Response: In the decision, the Responsible Official recognized that under the current management scheme, resource conditions on the allotment have improved since the late 1980’s.

However, he also recognized there are still degraded upland vegetation conditions and that high utilization is occurring within the Bill Ewing and Mujeres Tank areas (Doc. 107).

As part of the 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 five years, data collection will be replicated for the aforementioned resource conditions, in addition to duplicating photos 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 have been selected 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, 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 (Docs. 83; 101; 107).

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 noted in Issue 1, NEPA decisions that do not provide flexibility can be outdated within a very short time and are subject to reanalysis with a new decision and/or legal challenge. If monitoring demonstrates resource objectives identified in the original analysis are not being met, it would be incumbent on the Responsible Official to reinstate the NEPA process, unless provisions are made in the decision to adjust management.

Finding: The Responsible Official appropriately identified parameters to determine whether the selected alternative is improving resource conditions on the Montana Allotment. The Responsible Official also identified what action will be taken if resource conditions do not continue to improve under the selected alternative. The Responsible Official clearly identified what actions will be taken in the event the selected alternative does not meet resource objectives. Consequently, with this appeal, the permittees are contesting the Responsible Official's decision and have not been denied due process.