



United States
Department of
Agriculture

Forest
Service

R3 Regional Office

333 Broadway SE
Albuquerque, NM 87102
FAX (505) 842-3800
V/TTY (505) 842-3292

File Code: 1570-1/2200

Date: November 8, 2001

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

**CERTIFIED MAIL -
RETURN RECEIPT REQUESTED**

Re: Appeal #01-03-00-0061-A215, Temporal 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

District Ranger Graves issued a decision on July 26, 2001, for the Temporal Allotment. The decision resulted in the selection of the following alternative and authorization:

- Temporal Allotment, Alternative 3, which authorizes 150-350 head of cattle (cow/calf) to graze yearlong. (*Currently 325-375 head of cattle are authorized 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 recommended that the Responsible Official's decision 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 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. In addition, as determined by my review of the Western Gamebird Alliance appeal (#01-03-00-0062-A215), I am instructing the Responsible Official to ensure a six-inch stubble height standard is adhered to yearlong in high-quality quail habitat.

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

Sincerely,

/s/ Bob Leaverton (for)
JAMES T. GLADEN
Appeal Deciding Officer,
Deputy Regional Forester,
Resources

Enclosure

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

REVIEW AND FINDINGS

of the

Forest Guardians Appeal

#01-03-00-0061-A215, Temporal 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, saying, "...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: 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 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 regional guides.

The record clearly shows that health of the riparian areas was an objective and issue for this project-level analysis, and that the selected alternative #3 will improve riparian conditions to achieve recovery, consistent with the Forest Plan (Docs. 1, 46, 52, 74, 76, 77, 83, 90, 91). The selected alternative includes a reduction in livestock grazing, as well as monitoring the forage use in key areas to ensure that standards are met.

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 points to the perceived lack of management for riparian habitat, and contends 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 Bell's vireo, the yellow-billed cuckoo, the black hawk, the Mexican spotted owl, the Mexican garter snake, the narrow-headed garter snake, the Chiricahua leopard frog, the Yavapai leopard frog, the Arizona southwestern toad, and the Lowland leopard frog.

Response: The Forest conducted an adequate analysis of the effects the proposed action would have on threatened, endangered, sensitive and other species within the allotment (AR 41, 52, 91). In reviewing the appeal record, there was no evidence that the proposed action will reduce the viability of any of the species identified by the appellant, or any other MIS, game or ESA-listed species analyzed in the EA. The proposed action maintains or improves habitat quantity and/or quality for the species analyzed.

Finding: Review of the appeal record finds no evidence that the proposed action will reduce the viability of any of the species identified by the appellant, or any other MIS, game or ESA-listed species analyzed in the EA. The proposed action maintains or improves habitat quantity and/or quality for the species analyzed.

ISSUE 4: 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: Contrary to the appellant's contention, the Temporal Allotment does not provide nesting or potential habitat for the Northern goshawk (AR 41, 52).

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

ISSUE 5: The Temporal 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 Temporal 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 6: 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 EA clearly defines the nature and scope of the proposed action and alternatives to the proposed action through descriptions of the purpose and need, objectives and desired conditions, decision to be made, and key issues (Doc. 52, pp. 1-7). The range of alternatives is consistent with that defined scope. In addition, the appeal does not identify another specific alternative for the District's consideration (Doc. 99).

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

ISSUE 7: 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: The record provides ample evidence that past, present, and reasonably foreseeable actions were considered as possible contributors to cumulative effects, including actions such as: past mining and grazing; current mining, recreation and road use; and future mine waste clean-up and restoration activities (Doc 52 pp. 2-5, 21, 22, and Docs. 48 and 86).

Finding: The record shows that potential cumulative effects were adequately considered in the analysis process.

ISSUE 8: The EA violates 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.

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. 48, 49; and Doc.52, pp. 11-12). The project record also shows the Arizona Department of Environmental Quality (Doc. 16, Doc.51, Doc. 94) was consulted and provided input (Doc. 18) during the project scoping and planning phases. Because of soil and water concerns, soil condition, riparian area condition and water quality were identified as alternative evaluation criteria (Doc. 52). In addition, the alternative selected responds to soil and water issues through management changes that will have a positive effect on improving ground cover, reducing erosion, and protecting riparian areas (Doc 91).

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 9: 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 forest plan. The forest plan provides

direction for management emphasis within the project area. Net public benefits were analyzed appropriately during forest plan preparation and are outside the scope of project-level analysis.

The EA and other documents in the record describe how the selected alternative will improve riparian, range and soil conditions, and have no negative impacts with respect to long-term soil productivity (Doc. 2, 9, 52, 49, 90, 91).

Finding: This decision will improve land productivity and is, therefore, consistent with the Multiple Use and Sustained Yield Act.

ISSUE 10: 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 EA discloses the problems on the allotment and the desired conditions to be achieved, such as improving range and soil conditions (Doc. 52, pp. 1-5). The EA and Decision Notice describe how the selected alternative will improve those conditions and thereby remedy the problems identified (Doc. 52 and 91).

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