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Date: August 14, 2003

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**CERTIFIED MAIL – RETURN
RECEIPT REQUESTED**

RE: Appeal #03-03-00-0033-A215, Manila, Lyle Canyon, and Canelo Allotment Decision,
Sierra Vista Ranger District, Coronado National Forest.

Dear Mr. Taylor:

This is my review decision concerning the appeal you filed regarding the Decision Notice and Findings of No Significant Impact that authorize grazing and implement the grazing management strategy on the above-named allotments.

BACKGROUND

District Ranger Gunzel issued a decision on May 13, 2003, for the Manila, Lyle Canyon, and Canelo Allotments. The decision resulted in the selection of the following alternative and authorization:

Manila Allotment, Alternative 3, which authorizes 80–90 head of cattle (cow/calf) to graze yearlong.

Lyle Canyon Allotment, Alternative 3, which authorizes 117–182 head of cattle (cow/calf) to graze yearlong.

Canelo Allotment, Alternative 3, which authorizes 102 head of cattle (cow/calf) to graze March 1 through April 30 annually.

The District Ranger is identified as the Responsible Official, whose decision is subject to administrative review under 36 CFR 215 appeal regulations. The record contains no documentation regarding informal resolution of this appeal.

My review of your 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 with instructions the Responsible Official's decisions concerning the Manila, Lyle Canyon, and Canelo Allotments. The Responsible Official is directed to clarify the livestock numbers consulted on for the Lyle Canyon Allotment with the U.S. Fish and Wildlife Service and document that clarification in the record with a copy to appellants.

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
Appeal Deciding Officer,
Deputy Regional Forester

cc: Stephen L Gunzel, Mailroom R3 Coronado, David M Stewart, Christina Gonzalez

REVIEW AND FINDINGS
of the
Center for Biological Diversity's
Appeal #03-03-00-0033-A215

ISSUE 1: The decision violates Section 7(a)(1) of the Endangered Species Act.

Contention: The appellant contends the decision will not enhance the recovery of listed species.

Response: “Section 7(a)(1) of the ESA authorizes federal agencies to incorporate species conservation into their planning process but does not mandate agencies to accord endangered species conservation the highest priority in planning efforts.” (Federal Solicitor’s Opinion, p. 95, Endangered Species Handbook, D.J. Rohlf, Stanford Environmental Law Society)

Finding: Section 7(a)(1) was not violated.

ISSUE 2: The decision violates Section 7(a)(2) of the Endangered Species Act.

Contention: The appellant contends the decision to allow a range of cattle on the Lyle Canyon Allotment (50–182) lacks Section 7 consultation.

Response: A Biological Assessment/Evaluation (BAE) (PR #100) was prepared, amended (PR #104) to reflect the change in status of the Chiricahua leopard frog, accepted by the U.S. Fish and Wildlife Service (USFWS) (PR #102) and a Biological Opinion (BO) (PR #116)) was issued.

On page 3 of the BO (PR #116) the following statement is found: “ You requested formal consultation on May 29, 2002, for livestock grazing on the Canelo, Lyle Canyon, and Manila Allotments (2-21-02-F-201). Those proposed actions are analyzed herein.” The letter referred to (PR #101) included the BAE (PR #100) as an attachment. The action consulted on in the BAE, the proposed action in the EA (PR #61), and the Decision Notice (PR #131) are consistent with one another and with the BO. A table in the BO shows a typographical error on the part of the USFWS concerning the permitted use numbers on the Lyle Canyon Allotment. This confusion in the numbers must be clarified for the record.

Finding: The requirements of the Endangered Species Act have been met through conclusion of formal consultation with the USFWS. The decision does not violate Section 7(a)(2) of the Endangered Species Act.

ISSUE 3: The Decision Notice is not tiered to a valid Forest Plan.

Contention: The appellant contends that 15 years have passed without the mandatory revision of the Forest Plan required under the NFMA therefore the Forest Plan is outdated with respect to grazing and no longer in compliance with NFMA.

Response: The Consolidated Appropriations Resolution from Congress for 2003 (Section 320) states that the Secretary of Agriculture is not in violation of the Resources Planning Act of 1974 solely because more than 15 years have passed without revision of a plan. A recent court

decision in Wyoming upheld the use of the current plan until revised (*Biodiversity Assoc. v. USFS*, decision September 30, 2002). Regulations (36 CFR 219.35g) spell out that a revision schedule for each Forest Plan will be published.

Finding: The Forest Plan is the current NFMA Plan direction for the Coronado National Forest and assigns management direction until it is revised or amended.

ISSUE 4: There is no valid suitability analysis.

Contention: The appellant contends a suitability analysis must be done as part of this NEPA analysis.

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 Coronado Forest Plan. The 36 CFR 219 regulations are not applicable in this case.

ISSUE 5: Watershed conditions are unsatisfactory.

Contention: The appellant contends the Regional Guide requires that watersheds be analyzed and scored as being optimum, satisfactory, or unsatisfactory condition.

Response: The Regional Guide facilitated Forest Plan development. Requirements in the Regional Guide are reflected in the Forest Plan.

Finding: There is no requirement for project-level compliance with Regional Guides.

ISSUE 6: The proposed action is not fully described.

Contention: The proposed action is not clear in the Decision Notice.

The proposed action omits the monitoring for stubble height for Mearn's quail habitat, and cites an equivalent for stubble heights and utilization in quail key areas. Secondly, the action in fact covers four allotments, not three as described, in adding Collins Canyon. The record deceptively presents the scope of the decision as applying to a smaller area.

Response: The proposed action is to issue new 10-year term grazing permits for the Manila, Lyle Canyon, and Canelo Allotments (PR #61). The effect of grazing on Mearn's quail is a major issue analyzed in the EA. The EA describes the alternatives and effects (PR #61). The Decision Notice describes how acres are being added from the vacant Collins Canyon Allotment and Becker parcel to the Lyle Canyon Allotment (p. 3, PR #131). A fourth allotment is not being added; rather a larger area is being managed as one allotment. The Decision Notice also documents that Mearn's quail's key habitat will be monitored.

Finding: The EA and Decision Notice adequately disclose the proposed action, alternatives, and effects under NEPA.

ISSUE 7: The Forest Service failed to implement Forest Plan grazing utilization limits.

Contention: The appellant states that the Forest Service failed to develop site-specific forage use levels in consultation with the U.S. Fish and Wildlife Service.

Response: The record demonstrates the Forest Service did consult with the USFWS on site-specific forage use levels (PR #100, 116). Additionally, the final BO and conference opinion AESO/SE 2-21-98-f-399-R1 specifically states, “You requested formal consultation on May 29, 2002, for livestock grazing activities on the Canelo, Lyle Canyon, and Manila allotments (2-21-02-F-201). Those actions are analyzed herein.”

Finding: The 1996 Forest Plans as amended, included forage utilization guidelines by range condition and management strategy, to be used in the event that site-specific information is not available. Site-specific information was used to develop forage utilization standards therefore the 1996 Forest Plan Amendment has been properly implemented.

ISSUE 8: Failure to take a hard look at grazing actions as NEPA requires.

Contention A: The appellant contends the analyses failed to do an adequate economic analysis. Costs to the public of maintaining ranching operations on these allotments are not estimated in the EA. No analysis was done of the socioeconomic benefits of the no-grazing alternative to the general public in terms of enhanced recreational, wildlife and hunting resources. The income of the permittee is implicitly weighted much more heavily in the analysis than all the other resources values combined.

Response: Project-level requirements for social and economic analyses are found in Forest Service Manual (FSM 1970) and the Economic and Social Analysis Handbook (FSH 1909.17). The Responsible Official determines the scope, appropriate level, and complexity of economic and social analysis needed (FSM 1970.6). Project economic analyses are found in the EA, pp. 39-46, in the record (PR #60, PR #91) and further discussion is in the Response to Comments (PR #132, comment 3-3). The economic analysis report evaluated economic efficiency and economic viability of the permittee operations. Costs were kept constant across all alternatives. Amenity benefits were not estimated because the costs and benefits at a project level cannot be estimated. Recreation camping (PR #22) and recreational off-road use (PR #43 and #44) were noted in the allotments. This type of rural use is fairly standard for projects. Six partners were included in the analysis: the Arizona Water Protection Fund, the permittees, the Forest Service, and the two counties. Each of these partners pays and/or receives economic benefits from alternatives. The analysis was inclusive. As discussed in the revised economic report (PR #91), the permittees receive negative economic returns from remaining in ranching operations.

Finding: The economic analysis for this project is sufficient, follows agency guidance, and adequately discloses effects under NEPA for the Responsible Official to make a reasoned decision.

Contention 2: The projected precise figures for projected range soil and condition do not appear to be founded in any empirical evidence, and no statistical ranges of projections are given, as required by best scientific statistical practice.

Response: Effects to soils and vegetation are disclosed on pp. 17-32 of the EA (PR #61). The soil quality assessment is based on 1999 surveys (PR #10). The riparian area had monitoring points assessed in 1999 (PR #9). Several inspections of the allotments are found in the record (PR #14, 41, 51-55, 68, 90, 103, 109, 113, 118, 120, 137). Reference information from Natural Resources Conservation Service (PR #120) and a soil and range resource inventory report of Appleton-Whittell Research Ranch (PR #122) are part of the record. A monitoring report summarizing two to four years of range monitoring by county extension agents and the permittee is included (PR #67).

Finding: Empirical and measured data on range conditions were used as a basis for resource effects determination and were appropriately referenced in the NEPA document.

Contention 3: The EA fails to consider the impacts of global warming and the likely increased risk of erosion on these allotments due to global warming.

Response: The impacts of global warming on grazing in the southwest are outside the scope of this project EA. The discussion of current conditions and effects of drought are found in the rangeland vegetation, riparian, soil, air, and water report (PR #44).

Finding: The EA meets the standards for analysis and disclosure for direct, indirect, and cumulative impacts of the alternatives.

Contention 4: Effects of the proposed actions on private lands and other federal allotments that are part of these livestock operations are not analyzed for their environmental impacts.

Response: Actions such as historic grazing, prescribed and natural fires, wildfire suppression, invasive exotic plants, recreation, and water diversions were addressed in various resource effects sections in the EA (PR #61, pp. 20, 21, 23, 24, 26, 32) and in the reports in the record (PR #43, 100). Movement of cattle to private grazing lands was discussed in the wildlife report (PR #43). Grazing on adjacent allotments and on private lands was addressed in the rangeland vegetation report (PR #44). No other activities were identified in the analysis area.

Finding: The EA meets the standards for analysis and disclosure for direct, indirect, and cumulative impacts of the alternatives.

ISSUE 9: The Forest Service failed to choose the optimal alternatives.

Contention: The appellant contends, “The decision does not meet the high standards of the Multiple Use Sustained Yield Act that the agency allow only that combination of uses that will best meet the needs of the American people...without impairment of the productivity of the land, with consideration being given to the relative values of the various resources, and not necessarily the combination of uses that will give the greatest dollar return or the greatest unit output.” The appellant says that the Forest Service has not chosen the optimal alternative; that is, to end grazing, based on special economic interests of the permittee.

Response: The purpose of the project is to authorize livestock grazing and provide long-term management direction through Allotment Management Plans (PR #61, p. 1). A determination of agency policy of grazing on National Forest System lands is outside the scope of this decision. The Coronado National Forest Plan allocated lands for grazing activity in Management Areas 1,

4, 7, and 9, balancing permitted livestock with grazing capacity (see Forest Plan Goals, p. 10, Coronado LRMP, 1986, PR #117).

Finding: The alternatives meet the purpose and need statement and are consistent with Forest Plan objectives.

ISSUE 10: The Finding of No Significant Impact (FONSI) is contrary to NEPA.

Contention: The appellant contends an environmental impact statement must be prepared for the allotment because a significant impact may occur. Four points were listed: controversy, precedent, cumulative impacts, and listed species impacts.

Response:

1. Appellant claims controversy because of opposition to public lands grazing. This opposition is part of a national policy discussion about grazing on national forests and is not a scientific dispute about the methodology or results of the analysis. This type of activity (grazing) is historic and effects have been measured and analyzed for several years.
2. The appeal says significance is triggered by precedence because this action may bias the decision for future land use actions. Since the Rescission Act in 1994 established a nationwide schedule for NEPA analysis of grazing allotments, this EA is actually in line with national direction; and it is not setting any new precedent or standard for other projects.
3. Regarding cumulative effects and significance: project wildlife reports were finished based on the proposed action (PR #99, 100, 104, and 105). The U.S. Fish and Wildlife Service and the Forest subsequently completed a programmatic Forest-wide consultation on grazing (PR #116). The effects of this project were found to be similar for listed species whether in the Forest-wide consultation or in specific project consultation (PR #106) therefore significance is not attributed by the use of a programmatic consultation effort.
4. Regarding listed species, the project is not likely to jeopardize listed species or their habitat. The test of significance is the degree to which the action may adversely affect listed species or critical habitat. The Biological Opinion (PR #116) identifies a stock pond management and maintenance plan for the Sonora tiger salamander that will be followed on the Forest and other similar protective measures. Monitoring of agave stalk density for lesser long-nosed bat, and restrictions of grazing periods to protect the Huachuca water umbel are also included. The FONSI (PR #131) states that terms and conditions in the Biological Opinion for the lesser long-nosed bat, the Sonoran tiger salamander, the Chiricahua leopard frog and the Huachuca water umbel will be added to the enforceable terms and conditions of the grazing permits. There are no occupied, or likely to be occupied, sites for the Chiricahua leopard frog in the allotments (PR #104). Therefore, the degree of adverse significant effects from the proposed actions can be considered low. The Responsible Official, using analysis from the interdisciplinary team and from consultation, made the determination that an EIS was not needed in this case.

Finding: The FONSI properly referenced the EA and document records. The conclusion that an Environmental Impact Statement is not necessary is consistent with the information in the record.