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Forest
Service

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File Code: 1570-1/2200

Date: April 28, 2003

Laurie Fulkerson
Forest Guardians
312 Montezuma, Suite A
Santa Fe, NM 87501

**CERTIFIED MAIL – RETURN
RECEIPT REQUESTED**

RE: Appeal #03-03-00-0021-A215, Pinaleño Allotment Decision (Marijilda, Hawk Hollow, White Streaks, Shingle Mill), Safford Ranger District, Coronado National Forest

Dear Ms. Fulkerson:

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-referenced allotments.

BACKGROUND

District Ranger Asmus issued a decision on January 21, 2003, for the Pinaleño Allotments. The decision resulted in the selection of the following alternatives and authorization:

Marijilda Allotment, Alternative 4, which authorizes 49 head of cattle (cow/calf) to graze from 7 to 9 months with a variable season;

Hawk Hollow Allotment, Alternative 3, which authorizes 33 head of cattle (cow/calf) to graze November 1 – March 31 annually;

White Streaks Allotment, Alternative 3, which authorizes 38 head of cattle (cow/calf) to graze November 1 – April 30 annually; and

Shingle Mill Allotment, Alternative 3, which authorizes 115 head of cattle (cow/calf) to graze November 1 – April 30 annually, and 20 head of horses to graze for 10 months.

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 allotments, 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
Appeal Deciding Officer,
Deputy Regional Forester

Enclosure

cc: Christina Gonzalez, David M Stewart, George Asmus, Mailroom R3 Coronado

REVIEW AND FINDINGS

of the

Forest Guardians' Appeal

#03-03-00-0021-A215, Marijilda, Hawk Hollow, White Streaks, Shingle Mill Allotments

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, 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.

In addition, riparian conditions were reviewed in the EA, pp. 26-28, which disclosed that functional riparian areas would not be affected by grazing in any alternative.

Finding: Continued riparian protection/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 Mexican spotted owl, the American peregrine falcon, the Aplomado falcon, the lowland leopard frog, and the lesser long-nosed bat. 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 EA (Doc. 67) summarizes the effects to federally listed species and Region 3 Sensitive Species on the allotments, including those species listed by the appellant. Complete analysis may be found in the Biological Assessments (Doc. 83, 92, 117, 119) and resulting United States Fish and Wildlife Service (FWS) Biological Opinions (Doc. 99, 106). Management Indicator Species (MIS) are analyzed in Document 100.

The FWS concluded there was “No Jeopardy” to the lesser long-nosed bat, in spite of the “May Affect - Likely to Adversely Affect” determination (Doc. 99, 106). Additional species consulted on resulted in “No Effect” and “May Affect – Not Likely to Adversely Affect” determinations.

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

ISSUE 4: Population survey data of 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: The 36 CFR 219.19 regulations do not require population data at the project level, nor do they require trends to be maintained in an upward or stable condition. Data at the Forest level is adequate to determine general population trends and ensure that viable populations will be maintained (Doc. 100).

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

ISSUE 5: 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 term grazing permit issuance 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)].

Three or four alternatives per allotment were analyzed for the Marijilda, et al., decision: no grazing, current management, proposed action, and a variable season/coordinated grazing schedule alternative for Marijilda allotment (see EA, pp. 11-12).

A variety of treatments were analyzed for each allotment in the Marijilda, et al., EA. Alternatives are different from each other and produce different effects.

Finding: The Responsible Official appropriately defined the scope of the analysis and analyzed a range of reasonable alternatives within that scope. The EA meets the CEQ regulation requirements on development of alternatives.

ISSUE 7: 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 Guidelines. These guidelines specifically describe appropriate forage utilization levels recommended for the purpose of improving rangeland condition. Southwestern Region 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.

The record demonstrates that utilization standards for herbaceous forage will be 50 percent in the uplands and 40 percent in riparian areas, with exception of the Shingle Mill Allotment, where forage utilization will be limited to 40 percent on both the uplands and riparian areas.

Finding: Utilization standards for the Pinaleño Allotments 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 8: 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 evaluated the past, present, and reasonably foreseeable actions listed in the Marijilda, et al., EA on p. 11. Actions such as prescribed fire, water diversions, historic grazing, and exotic plant invasions were addressed in various resource effects sections in the EA (pp. 11, 21, 23, 24, 26-18) and in the record (Doc. 33, 59, 100, 93, 101, 62).

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 or not an EIS is needed.

ISSUE 9: 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. 67, 129). None of the downstream waters are “water quality limited” (EA, p. 34).

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 10: 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 11: 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 and documents in the record disclose the analysis done to evaluate resource conditions on the allotment and the effects of alternatives considered. In the DN/FONSI, the Responsible Official properly assessed the issues, public input, and impacts to resources in his decision rationale.

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