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File Code: 1570-1/2200

Date: April 20, 2004

Jon Paul Oliva  
Forest Guardians  
312 Montezuma, Suite A  
Santa Fe, NM 87501

**CERTIFIED MAIL – RETURN  
RECEIPT REQUESTED**

RE: Appeal #04-03-00-0009-A215, Papago and Kunde Allotment Decision, Sierra Vista  
Ranger District, Coronado National Forest

Dear Mr. Oliva:

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 Gunzel issued a decision on January 14, 2004, for the Papago and Kunde Allotments. The decision resulted in the selection of the following alternative and authorization:

Papago Allotment, Alternative 4, which authorizes 250 head of cattle (cow/calf) to graze yearlong.

Kunde Allotment, Alternative 4, which authorizes 31 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 215.17, 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 215.18. 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 proposals were identified; c) the proposals and decision are consistent with agency policy, direction and supporting information; and d) public participation and response to comments were adequate.



## **REVIEW AND FINDINGS**

**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.

**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. 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 (PR #111), Wildlife Specialist Report (PR #100), project level Management Indicator Species (MIS) analysis (PR #98), Forest-wide MIS analysis (PR #118), and the biological assessment (PR #107) analyzed the impacts to Federally listed species, MIS, and Region 3 Regional Forester Sensitive Species known or expected to occur in the proposed action area.

The U.S. Fish and Wildlife Service issued a Biological Opinion (PR #141) which concurred with all “not likely to adversely affect” findings from the project and issued a “no jeopardy” opinion for the Gila topminnow, Chiricahua leopard frog, lesser long-nosed bat, Huachuca water umbel, and Canelo Hills ladies’ tresses. A “no jeopardy/not likely to adversely modify” opinion was also obtained for the Gila chub and its proposed critical habitat in the event of listing of the species and designation of critical habitat.

Discussions of the proposed action on riparian areas and riparian obligate species are included in the EA (PR #111), pp. 20-25; the Soil/Water/Air specialist report (PR #86), pp. 12-17; the project MIS analysis (PR #98), which incorporated by reference the Forest-wide MIS analysis (PR #118); and in the Wildlife Specialist Report (PR #100). The analyses were supported by monitoring information (PR #63, #89, #101).

A thorough analysis of the effects of the proposed action on indigenous wildlife was completed. No threat to the viability of any species was determined as a probable result of implementing the proposed action.

**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 Management Indicator Species 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:** Data from which MIS trends were determined is found within the Forest-wide MIS analysis (PR #118), which was incorporated by reference into the project-level MIS analysis (PR #98). Quantitative data are used when available. In keeping with the recent Corner Mountain decision (*Center for Biological Diversity v. US Forest Service*, No. CV 01-1106 WJ/RLP ACE), “The Forest has the discretion regarding the identification of the geographic area within which the effects of the environmental impacts are measured.” In this context, the MIS analysis and disclosure of effects was thorough.

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

**ISSUE 5:** The Papago and Kunde 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 Papago and Kunde 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. A recent court decision in Wyoming upheld the use of the current Plan until revised (Biodiversity Assoc. v. USFS, decision September 30, 2002). Also, language in the 2004 appropriations bill for the Forest Service allows that (section 320). "Prior to October 1, 2004, the Secretary of Agriculture shall not be considered to be in violation of subparagraph 6(f)(5)(A) of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1604(f)(5)(A)) solely because more than 15 years have passed without revision of the plan for a unit of the National Forest System." 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:** 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 environmental assessment (EA) includes a "no grazing" alternative, and four action alternatives, which were studied in detail. Each of the action alternatives has differing livestock numbers, offering a range of effects.

The EA includes brief discussions of alternatives, as required by section 102(2)(E) of NEPA, which states, "Study, develop and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources." The EA (PR #111) indicates on pages 11-12, that there were five issues identified as being significant to the proposed action (40 CFR 1501.7(a)(3)). The alternatives studied in detail meet the purpose and need for action and address the identified issues.

**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, 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 allotments.

**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 are not overgrazed.

The record demonstrates utilization standards on both allotments will be 45%, with 30% on riparian trees and shrubs. Within Mearns' quail habitat, the utilization standard will be 35-40%.

**Finding:** Utilization standards for the Papago and Kunde 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 result from the incremental impacts of the action when added to past, present, and reasonably foreseeable future actions (40 CFR 1508.7). Resource specialists considered the cumulative effects of a variety of past, present, and foreseeable future actions on their respective resources; including fisheries, range, wildlife, plants, economics, soil, watershed, and air. See pages 30, 35, 49, 55, 58, and 59 in the EA (PR #111). The cumulative affects of historic cattle grazing, smuggling and illegal trafficking, fire suppression, recreational use, and invasive weeds were evaluated.

**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's conclusion that water quality on these allotments will not be detrimentally affected is flawed and 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 were made during the planning process. The project record also shows the Arizona Department of Environmental Quality (ADEQ) was consulted (PR #19, #40, #110) and provided input (PR #32) during the project scoping and planning phases. As suggested by ADEQ, the project provides for Best Management Practices as a means of assuring protection of the existing high quality water system (PR #111, pp. 16-17) and the environmental analysis performed (PR #86, #111, pp. 58-59) provides supportable conclusions regarding the anticipated protection of water quality. Improvement of vegetation and riparian conditions were identified as project objectives and significant planning issues (PR #106, #111). In addition, the alternative selected responds to the riparian issue through management changes that will have a positive effect on improving ground cover, reducing erosion, and protecting riparian areas (PR #132).

**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 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 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 for Papago and Kunde allotments (PR #142), 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.

**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 Papago and Kunde 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].

Sincerely,

/s/ Lucia M. Turner  
LUCIA M. TURNER  
Appeal Deciding Officer,  
Deputy Regional Forester

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