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File Code: 1570-1

Date: March 7, 2000

Forest Guardians
c/o John Horning
1413 Second Street, Suite One
Santa Fe, NM 87505

Certified Mail-Return Receipt Requested
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Re: Appeal #00-03-00-0018-A215, Corduroy Allotment, Black Range Ranger District, Gila National Forest

Dear Mr. Horning:

This is my review decision concerning the appeal you filed on behalf of Forest Guardians, regarding the Decision Notice and Finding Of No Significant Impact which authorize grazing and implement the grazing management strategy on the Corduroy Allotment.

BACKGROUND

On April 22, 1999, District Ranger Paxon issued a decision for the Corduroy Allotment (Alternative D) which authorized 1134 head of cattle (yearlings) to graze for a six month season. On July 27, 1999, this decision was reversed under administrative review (36 CFR 215) because utilization levels displayed for Alternative D exceeded levels which would maintain or improve range conditions. Excessive utilization levels would not comply with the Forest Plan or meet the purpose and need for the proposed action on the Corduroy Allotment.

In response to the review decision, the interdiscliplinary team (IDT) reviewed the analysis and process record. The IDT clarified in the record that utilization levels would be limited to 35% in the uplands and 25% in riparian areas. These use levels are consistent with the Forest Plan and range conditions will be maintained or improved. This clarification was accomplished by deleting a utilization table which was in error from the EA (Chapter III, page III-18).

On December 3, 1999, District Ranger Paxon issued another decision for the Corduroy Allotment. The decision resulted in the selection of the following alternative and authorization: Corduroy Allotment, Alternative D, which authorizes 1134 head of cattle (yearlings) to graze 4/1 to 9/30 annually and ten horses to graze yearlong. This is the same decision reached on April 22, 1999.

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 pursuant to and in accordance with 36 CFR 215.17. I have thoroughly 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 were consistent with agency policy, direction and supporting information; (d) public participation and response to comments were adequate; and (e) all of the major issues raised by the appellant were adequately addressed in the project record.

APPEAL DECISION

After a detailed review of the records and the Appeal Reviewing Officer's recommendations, I affirm the Responsible Official's decision concerning the Corduroy 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/ James T. Gladen
JAMES T. GLADEN
Appeal Deciding Officer
Deputy Regional Forester, Resources

Enclosure

cc:
Forest Supervisor, Gila NF
District Ranger, Black Range RD
Director of Rangeland Management, R3
Appeals and Litigation Staff, R3

REVIEW AND FINDINGS

of the

Forest Guardians' Appeal #00-03-00-0018-A215

regarding

Corduroy Allotment Decision

ISSUE 1: The Forest Service violated NFMA's consistency requirement by failing to comply with standards and guidelines for management of riparian areas listed in the Gila National Forest Plan.

Contention: The appellant contends the decision fails to make the health of riparian areas and watersheds a priority and in doing so violates both the Gila National Forest Plan and the Southwestern Regional Guide. The appellant further contends that the Forest Service has failed to meet the Forest Plan requirement of completing classification and inventories of all riparian areas.

Response: The project record provides evidence that riparian condition was a critical planning issue. The EA (Doc 04-04, p.I-5) describes the resource objective of the proposed action as one that restores unsatisfactory riparian condition to satisfactory condition per the Forest Plan riparian guidelines. The EA (Doc 04-04, p. II-11) also acknowledges that riparian condition was identified as a significant issue. The definition of riparian (Doc 29-15, p. 13) clearly includes all areas meeting the hydric soil and plant requirements regardless of size.

The environmental effects on riparian condition were thouroughly analyzed for all the alternatives (Doc 04-04, p.III-16-18 and p. III-29-31). The EA and the Decision Notice (29-15, p.5) determined that Alternatives A and D best complied with the Forest Plan objective of moving riparian areas to satisfactory condition. The Decision notice further concluded that improved riparian conditions will be achieved through the selected action by a riparian exclusion fence and by additional rest gained by the change in livestock class and the reduced grazing season.

The Regional Guide suggests that Forests, in developing their Forest Plans, "improve all terrestrial ecosystems and watersheds to satisfactory or better condition by 2020" (pg. 3-2). The requirement in the Forest Plan to classify and inventory all riparian areas is a guideline and not a hard and fast standard. Furthermore, the question of conformance with the referenced guideline is outside the scope of this decision and more appropriately handled at the Forest Plan level. The revision of the Gila Forest Plan is scheduled to begin this year. The appellant will be afforded the opportunity to raise this concern during the scoping process.

Finding: The EA appropriately identified the scope of the analysis including identification of significant issues and adequately disclosed the environmental effects of the proposed action and alternatives on riparian condition. Implementation of the decision will result in improved riparian conditions. Appropriate procedural provisions of NFMA were followed.

ISSUE 2: The Forest Service violated the National Forest Management Act (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: 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: Contrary to the appellant's assertions, 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 , 1999 U.S. App. LEXIS 20026 (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 (Gila Forest Plan EIS Appendix B, Description of Analysis Process).

Finding: There is no requirement to conduct a suitability analysis when conducting a National Environmental Policy Act (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 3: The decision violates NFMA by failing to maintain viable numbers of all species and protect riparian areas.

Contention: Appellant contends that the Forest Service must provide protection and habitat for riparian obligate species. Appellant cites 36 CFR 219.19 planning regulations in supporting the assertion. The appellant further contends that "despite this direction" (i.e. Forest Plans), the Forest Service has failed to "protect riparian habitats and riparian obligate species", due to livestock grazing.

Response: Regulations at 36 CFR 219 Subpart A, which appellant cites, set forth a process for developing, adopting, and revising land and resource management plans for the National Forest System as required by the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended [36 CFR 219.1(a)]. The Forest Plan includes goals, objectives, standards, and guidelines for the protection of threatened, endangered, Forest Service sensitive, and other species and their habitat. This site-specific project is designed under the direction provided in the Forest Plan.

The EA (pg III-16) indicates physiological growth requirements of forage plants would be met and the selected alternative would improve reproductive capacity of the grass plants, forage production and forage frequency. The Decision Notice further states that excluding livestock from the riparian area in Beaver Creek, allowing additional rest, changing the class of livestock and reducing season of use to 6 months, would address watershed and riparian conditions. Habitat for most non-grazing wildlife would improve (EA pg III-21). The effects analysis

discloses that utilization standards will provide for continued existence of proposed and listed species, preclude a trend toward Federal listing or loss of viability, and provide for maintainance of vegetative cover for prey species (EA pgs III-21-28).

Finding: The decision will provide for improvement of upland range and riparian conditions and will not adversely affect the viability of plant and animal species.

ISSUE 4: The Forest Service violated the NEPA by failing to analyze a reasonable range of alternatives.

Contention: The appellant contends that a reasonable range of alternatives, as required by NEPA implementing regulations and Forest Service directives, were not considered.

Response: The formulation of alternatives is driven by significant issues identified in scoping 40 CFR §1501.2(c). For an alternative to be reasonable, it must meet the stated purpose and need, and address one or more issues. The analysis identified significant issues which were addressed by the alternatives considered.

The Corduroy analysis considered four alternatives, which are as follows: Alternative A as the No Action (no grazing); Alternative B as the Current Permit; Alternative C as the No Change (current management); and Alternative D as the Proposed Action (selected alternative).

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

ISSUE 5: The Forest Service violated the NEPA in failing to consider and disclose adequately the cumulative impacts of the proposed action.

Contention: The appellant contends that the cumulative effects of the alternatives were not adequately addressed, considering all past, present, and reasonably foreseeable activities as required by the NEPA.

Response: The cumulative effects analysis documented in the Corduroy EA (Docs. 04-04), concluded that "No alternative would have a significant impact on the soil, water and air resource". The allotment acreage is split between three watersheds, Wall Lake (24,000 acres), Beaver Creek (35,000 acres), and Cuchillo Negro (1,000 acres). The direct, indirect, and cumulative watershed effects were analyzed at the Wall Lake and Beaver Creek 5th code watershed scale contained in the project record (Doc. 21-06). These watersheds cover 101 and 307 square miles, respectively. The analysis identified activities contributing to cumulative watershed effects which include; livestock grazing, deer and elk grazing, roads and trails, and fire. The cumulative watershed effects analysis includes 16 references consisting of; professional articles, technical reports, and management guidelines for managing grazing in riparian, woodland, and grassland areas.

The cumulative watershed effects analysis concludes that resource conditions would remain static at acceptable levels or improve over time from implementing the selected alternative.

Finding: The Responsible Official considered and disclosed the cumulative impacts in the decision making process.

ISSUE 6: The decision violates the Endangered Species Act.

Contention: The appellant contends that the decision violates the Endangered Species Act because of failure to meet guidance criteria for aquatic species. The appellant argues that a number of riparian areas are severely degraded. Thus, the appellant concludes that the finding of may affect, not likely to adversely affect for aquatic species is incorrect and illegal, because the subwatershed standard of moderate to slightly degraded from the presumed natural condition as a result of livestock grazing has been exceeded.

Response: The district biologist completed a biological assessment (record at 23-01) and specialist's reports (record 23-02, 23-03) using the "Guidance Criteria for Determining the Effects of Issuing Term Grazing Permits on Threatened, Endangered, or Species Proposed for Listing" (record at 08-01). The Corduroy assessment found "may affect, not likely to adversely affect" for the spikedace and the loach minnow (record at 23-01, 23-02, 23-03). The biologist reached this conclusion after a final inspection of the watershed on June 18, 1999. The Decision Notice states a half mile of fence will be built around the perennial section of Beaver Creek to mitigate impacts to potential threatened and endangered species habitat. This action would exclude livestock grazing yearlong from potential habitat. A review of the project record indicates this half mile is the only potential habitat for spikedace and loach minnow on Forest Service lands within the allotment. The remainder of Taylor and Beaver Creeks are intermittent (record 23-01, 23-02, 23-03). The Biological Assessment/Evaluation (record 23-01) states both Taylor Creek and Beaver Creek subwatersheds are in satisfactory condition. Watershed analyses (record at 21-02 & 21-04) further support that both Taylor Creek and Wall Lake watersheds are in satisfactory condition.

Finding: The analysis followed the procedures and criteria outlined in the Guidance Criteria (records at 08-01). The District has excluded cattle grazing from potential habitat year round. Historic and recent surveys indicate this is the only potential habitat within the allotment because the remainder of the creeks are intermittent in nature. The nearest known historic population is three miles downstream. The Responsible Official has met the intent of applicable laws for threatened and endangered species.

ISSUE 7: This Allotment EA violates the Clean Water Act (CWA).

Contention: Appellant failed to provide any specific actions pursuant to the alleged violation of the CWA.

Response: In the absence of specific allegations, the technical response to this issue must also be limited. However, the project record shows that proper CWA procedures were followed and Best Management Practices are planned.

Finding: There is no violation of the Clean Water Act.

ISSUE 8: 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 to authorize livestock grazing will permanently impair land productivity.

Response: Management of forest lands for 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 at the Forest Plan level, but are outside the scope of a project level analysis.

The Forest evaluated the effects of livestock use of forage (the renewable resource) by looking at appropriate productivity indicators. The effects of grazing on watershed recovery, specifically the amount of bare soil and its connection to accelerated soil loss was identified as a significant planning issue during scoping (EA p. 11). Potential impairment of productivity was evaluated using ground cover, infiltration, soil loss, and soil organic matter as indicators of the hydrologic, stability, and nutrient cycling functions of the soil (record at 21). The evaluation of these conditions indicates that watershed condition would be maintained or improved and that long-term productivity would be maintained with the allowable use levels imposed under the selected alternative (EA p. 31).

Watershed condition was discussed in great detail in the project record (record at 21). Existing conditions were described and literature was cited where information was collected on condition changes related to grazing impacts. This information was used to estimate the effects that the alternative stocking levels and utilization rates would have on watershed condition (hydrologic, stability and nutrient cycling functions). An improved situation for recovery of historic fire frequencies was determined based on fine fuels availability that would be expected with the allowable use levels imposed under the selected alternative (EA p. 46 and record at 22).

Although there is no specific section that describes the relationship between short-term uses and long-term productivity, it is discussed throughout the document. The hydrology, soils and watershed sections (EA p. 28-31) directly describe the effects of the short-term uses planned under each alternative and how they relate to long-term productivity. The FONSI documents the Responsible Official's conclusion that there are no significant effects on long-term productivity from the authorized short-term uses (records at 29-15).

Finding: The interdisciplinary team (IDT) appropriately considered the effect of the proposed action on long-term productivity of the land.

ISSUE 9: 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 record demonstrates that the selected alternative will improve watershed and riparian conditions (Docs. 04-04; 29-15). The EA displays the effects of implementing the proposed action and alternatives. The Responsible Official's decision rationale reflects consideration of the effects as disclosed in the EA (Doc. 29-15).

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

ISSUE 10: The Forest Service decision violates the Wilderness Act .

Contention: Appellant contends that while the Wilderness Act allows for grazing to continue in wilderness areas, the level of grazing and resource degradation that have occurred on the Corduroy Allotment makes it imperative that all grazing be discontinued.

Response: Livestock grazing was first authorized on the Corduroy Allotment as early as the 1940's (Doc. 04-04). Grazing has occurred on the Forest prior to it becoming part of the National Forest System therefore, grazing on the allotment pre-dated the Wilderness Act.

The Wilderness Act of 1964 Sec. 4(d)(4)(2) states, "[T]he grazing of livestock, where established prior to the effective date of this Act, shall be permitted to continue...". Authorizing grazing use on allotments within wilderness areas is consistent with the Act and a legitimate activity within the wilderness areas as cited above. The impact of grazing on wilderness was not identified as a significant issue during the scoping process. The disclosure of environmental effects in the EA demonstrate there will be no significant effects on wilderness from the proposed action.

Finding: The selected alternative is consistent with the Wilderness Act.