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File Code: 1570-1

Date: March 24, 2000

Thomas Manning
406 5 Arizona
Silver City, NM 88061

Certified Mail-Return Receipt Requested
P 556 954 744

Gila Watch
Attention: Michael Sauber
P.O. Box 309
Silver City, NM 88062

Certified Mail-Return Receipt Requested
P 556 954 745

Re: Appeals #00-03-0039-A215 Gallo Mountain, #00-03-00-0040-A215 East and West Demetrio, #00-03-00-0041-A215 Sanchez, #00-03-00-0042-A215 Spur Lake, and #00-03-00-0043-A215 Luna Allotment Decisions, Quemado Ranger District, Gila National Forest

Dear Mr. Manning and Mr. Sauber:

This is my review decision concerning the appeals you filed regarding the Decision Notices and Findings Of No Significant Impact which authorize grazing and implement the grazing management strategies on the above named allotments . Due to the commonality between the appeals, I have chosen to consolidate my response into one decision document.

BACKGROUND

District Ranger Hibbets issued decisions on December 13, 1999, for the above named allotments. The decisions resulted in the selection of the following alternatives and authorizations:

Gallo Mountain Allotment, Alternative D, which authorizes 433 - 662 head of cattle (yearlings) to graze from 5/15-10/15 annually on the National Forest and 17 - 28 head of cattle (yearlings) to graze from 5/15-10/15 annually under a term private land grazing permit.

East and West Demetrio Allotments, Alternative D, which authorizes 80 - 116 head of cattle (cow/calf) to graze yearlong on the East Demetrio Allotment and 70 - 94 head of cattle (cow/calf) to graze yearlong on the West Demetrio Allotment.

Sanchez Allotment, Alternative G, which authorizes 34 - 42 head of cattle (cow/calf) to graze yearlong.

Spur Lake Allotment, Alternative E, which authorizes 315 - 438 head of cattle (cow/calf) to graze from 11/1-5/31 annually on the National Forest, 85 head of cattle (cow/calf) to graze from 11/1-5/31 annually under a term private land grazing permit, and 478 - 601 head of cattle (cow/calf) to graze from 6/1-10/31 annually on the National Forest.

Luna Allotment, Alternative I, which authorizes 226 - 249 head of cattle (cow/calf) to graze from 4/15-10/31 annually.

The above decisions are written for variable stocking rates, but the permits will be written for the lower stocking rates identified in the decisions. At some time in the future, the permits may be modified to allow a higher stocking rate. The higher stocking rate would be based on an increase in forage capacity consistent with either a decrease in elk numbers or corresponding improvement in management resulting in greater forage capacity. However, greater capacity would have to be demonstrated through monitoring and would not automatically follow either a decrease in elk numbers or improvement in management.

The District Ranger is identified as the Responsible Official, whose decisions are 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 appeals. The record indicates that informal resolution was not reached.

My review of these appeals has been conducted in accordance with 36 CFR 215.17. I have thoroughly reviewed the appeal records and the recommendations of the Appeal Reviewing Officer. My review decision incorporates the appeal records.

APPEAL REVIEWING OFFICER'S RECOMMENDATION

The Appeal Reviewing Officer recommended that the Responsible Official's decisions 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 decisions 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 appellants were adequately addressed in the project records.

The appellants posed many questions of the Appeal Reviewing Officer which, although interesting, are outside the scope of this administrative review and, therefore, will not be addressed in this decision. This review is confined to the substantive issues raised by the appellants regarding the above named decisions. However, I have asked Pat Jackson of my staff to contact you and discuss these questions.

This administrative review considered documentation in the appeal records with respect to site specific authorizations of grazing. Broader forest management issues such as sustainability (as defined by appellant, i.e. woody vegetation encroachment) and suitability are issues which are beyond the scope of this analysis and more appropriately part of the forest planning process.

In your appeals you have included a FOIA request for documents in the administrative records which were used in support of the above named decisions. The documents used to formulate the NEPA analyses and decisions are contained within the project records for the allotments under appeal. The project records are on file at the Quemado Ranger District office. If after inspection of the records you wish to obtain specific documents, the District Ranger will accommodate you.

APPEAL DECISION

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

Enclosure

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

REVIEW AND FINDINGS

of the

Thomas Manning and Gila Watch Appeals

#00-03-00-0039-A215, Gallo Mountain Allotment Decision

#00-03-00-0040-A215, East and West Demetrio Allotment Decision

#00-03-00-0041-A215, Sanchez Allotment Decision

#00-03-00-0042-A215, Spur Lake, Allotment Decision

#00-03-00-0043-A215, Luna Allotment Decision

ISSUE 1: The environmental analyses (EAs) failed to do a detailed analysis of the small riparian areas, including the seeps and springs on the allotments.

Contention: The appellants contend that the small riparian areas should have been considered a significant issue. They assert that failure to do this has led to the lack of any detailed analysis of significant environmental consequences of the proposed actions.

Response: The EA for the Sanchez Allotment (Doc. 104, Chapter III, page 48) discloses there are no riparian habitats on the allotment. Further, on page 53 of Chapter III, it is documented that there is no riparian dependent vegetation on this allotment. Therefore, there would be no effect to any species reliant on riparian habitat.

The EA for the Luna Allotment (Doc. 95, Chapter III, page 29-31) discloses that riparian condition has been monitored since 1989 in selected locations in a number of drainages. The primary riparian areas are San Francisco River, Stone Creek, Dry Blue Creek, and Trout Creek. Other drainages are either ephemeral or intermittent with short narrow stretches of water and riparian vegetation.

There are 19 riparian monitoring sites (RASES) on the Luna Allotment. Bank protection greater than or equal to 80 percent is considered satisfactory. Sixty three percent of the transects are considered satisfactory for bank protection. Monitoring data indicates the loss of bank protection and woody species in the Dry Blue Creek is largely attributable to dry weather and elk use since livestock grazing has been heavily constrained in the Dry Blue in an effort to improve riparian vegetation. Low scores on Hy Clark for woody riparian species reflects the wet meadow nature of these sites. Frieborn Canyon is a narrow confined mixed-conifer canyon with little potential for riparian species. The drought in 1996-1997 exacerbated conditions in the riparian and uplands. Elk use in riparian areas and meadows was high to extreme during these years. Loss of woody riparian plants occurred when creek reaches dried up completely and wildlife use shifted to the few remaining green areas (Doc. 95).

The selected alternative for the Luna Allotment proposes the construction of 2.5 miles of fence to create a livestock exclosure in the Dry Blue pasture. Two additional riparian pasture fences would be constructed to control use in a portion of the San Francisco River and Stone Creek to meet riparian improvement objectives (Doc. 95).

The EA for the Spur Lake Allotment (Doc. 110, Chapter I, page 7) establishes an objective to increase woody riparian plant composition within SA Creek and maintain or improve bank cover and herbaceous ground cover within all riparian areas within the next 10 years. This is consistent with Forest Plan direction that requires all riparian areas be improved to satisfactory or better condition by 2030.

The EA for the Gallo Mountain Allotment (Doc. 97) identifies Gallo Canyon, Whiskey Creek, Negro Canyon, and Bull Camp Canyons as the principal drainages. Gallo Canyon, Negro Canyon (except on private land), and Bull Camp Canyon are ephemeral drainages classified as non-riparian. Proper functioning condition (PFC) was evaluated on whiskey Creek (Mata Springs to private land) and Perry Lawson Canyon in 1998. Perry Lawson Canyon was determined to be ephemeral and non-riparian. Whiskey Creek was determined to be riparian, functional – at risk, with no apparent trend. There are no other riparian areas on the allotment.

The EA for East and West Demetrio Allotments (Doc. 89) discloses there are three riparian areas on the allotments. Harris Creek is on the East Demetrio Allotment. Blanco Canyon and Demetrio Creek are on the West Demetrio Allotment. Harris Creek was evaluated using PFC protocol in 1998. It was determined to be functional - at risk, with an upward trend. The main cause of impairment was noted as elk use preventing maintenance and recruitment of woody riparian species. Demetrio Creek was also evaluated using PFC protocol and was determined to be nonfunctional with the absence of cottonwood regeneration, heavy utilization of grasses, and no defined channel. The condition of Blanco Canyon is similar to Demetrio Creek.

The EA for Spur Lake Allotment (Doc. 110) discloses there are 6 riparian drainages and 3 riparian springs on the allotment. Only Coyote Creek is currently meeting Forest Plan standards and guidelines.

Common to all decisions are key area forage utilization guidelines of 35 percent in the uplands during the growing season, 40 percent in the uplands during the dormant season, and 25 percent of the woody riparian sprouts/seedlings within a riparian area heavily hedged. A review of the records demonstrates that monitoring of key areas is planned. The Addendum to the biological evaluation for the five allotments under appeal discloses that utilization checks of key areas will typically be scheduled to occur before livestock enter a pasture and when livestock leave a pasture. When reason exists to expect significant over utilization may occur prior to scheduled pasture move dates, a mid-point utilization check may be made. More typically, range inspections are conducted concurrent with other work. Results of such monitoring will be used to make annual adjustments in grazing systems, use periods, and stocking rates. It is recognized that under the most ideal conditions all key areas will not be utilized uniformily. Therefore, 60 percent utilization of any key area is the threshold of destructive use and will trigger removal of livestock from the key area. This could include herding livestock to another area of a pasture or complete removal from a pasture depending on circumstances. Recognition of such use could come from Forest Service employees, public input, or permittee concern.

Findings: The interdiscliplinary team integrated utilization guidelines and monitoring protocol to give preferential consideration to riparian communities and manage riparian areas to protect and improve the productivity and diversity of riparian-dependent resources as required in the Forest Plan Standards and Guidelines. Small riparian areas are included in the analysis.

ISSUE2: Woody encroachment.

Contention: The appellants assert that despite the fact that woody vegetation encroachment is a significant problem, and a threat to the continued productivity and the ecological diversity of the allotments, the EAs failed to list woody encroachment as a significant issue. The appellants also assert that the situation analysis makes the unsubstantiated conclusion that the utilization rates will not exacerbate the encroachment problem.

Response: The proposed action is to authorize specified numbers of livestock, under a specified management system, for a ten year period. The proposed action provides a focus for the analysis of effects of this action and alternatives. The purpose and need statement specifies the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action (40 CFR §1502.13). This further defines the scope of the analysis. The stated decision to be made defines the scope by detailing the components of the decision. The scope of the analysis is within the Responsible Official's discretion. The Responsible Official has the discretion whether or not to propose actions which are similar in nature or would occur together in time or geographically. The proposed action, scope of the proposed action, purpose and need statement, and decision to be made are described in detail in the EAs (Gallo Mountain Doc. 97; East and West Demetrio Doc. 89; Sanchez Doc. 104; Spur Lake Doc. 110; Luna Doc. 95).

The Responsible Official invited the participation of affected and interested parties, consistent with scoping direction at 40 CFR §1501.7 and 40 CFR §1501.4(b). Comments received in response to the proposal to authorize grazing represent both the ranching community and other forest users. Comments were evaluated to identify issues significant to the proposals (40 CFR §1500.2(b) and (e) and §1501.7(a)(2)). The methodology for identifying significant issues is explained in the EAs. Significant issues had to meet the following criteria; 1) be within the scope of the analysis, 2) not decided by law, regulation, or previous decision, 3) relevant to the decision, 4) supported by scientific analysis rather than conjecture, and 5) not limited in context, duration, nor intensity (Gallo Mountain Doc. 97; East and West Demetrio Doc. 89; Sanchez Doc. 104; Spur Lake Doc. 110; Luna Doc. 95). This procedure for identifying significant issues is consistent with agency instructional materials taught and applied nationally (1900-01 Unit 6 - Issue Management, Handout 6.2).

The appellants infer that selected utilization rates will exacerbate the encroachment problem. However, the analyses disclose that under all alternatives, including the no grazing alternative, encroachment of trees into grasslands will continue with the associated loss of forage production and ground cover. Changes in vegetative composition in blue grama habitats will be slow under any alternative. Under all alternatives, ground cover is predicted to improve resulting in greater fine fuel availability for carrying fire and competing with invading tree cover.

Finding: While woodland encroachment is addressed, the lack of a proposal for active manipulation of vegetation is appropriate given the proposed action. The limitation of the scope to grazing in this analysis does not preclude the Responsible Official from considering woodland management projects at some point in the future. The decisions provide the flexibility to modify the annual operating instructions to accumulate sufficient fine fuels for fire as a tool in future woodland management projects.

ISSUE 3: The National Environmental Policy Act (NEPA) processes were flawed.

Contention: In spite of the fact that the NEPA process is specifically promulgated to allow for meaningful public involvement that will lead to more environmentally sensitive decisions, the Quemado NEPA staff failed to adequately incorporate the public's serious environmental concerns during the various stages of the NEPA processes. This failure has led to inadequate EAs and flawed decisions.

Response: The EAs are a rigorous treatment of the NEPA process particularly from the aspect of public involvement and issue development. Document 91, for example, in the Luna process record specifically tracks the issues raised by Gila Watch and Thomas Manning. The categories of issues raised by the appellants, riparian impacts, woody species encroachment, and maintaining the long term productivity of the land are addressed at scales appropriate for the decisions and are considered in detail within the EAs and the Decision Notices and FONSIs.

The process records also have specific documentation of how input from the public or other agencies was processed. The process records also address the issues raised in data collected, reports prepared, and evaluations conducted throughout the process. (Gallo Mountain Docs. 97, 98; East and West Demetrio Docs. 89, 90; Sanchez Docs. 104, 105; Spur Lake Docs. 110, 111; Luna Docs. 95, 96).

Finding: The records track the issues raised by the appellants throughout the documents at an appropriate scale and take the requisite "hard look" for making reasoned decisions. The documents in the records address the direct, indirect and cumulative impacts of the proposed action and reasonably foreseeable actions which could influence the decisions and fully comply with NEPA.

ISSUE 4: The economic analyses were inadequate.

Contention: The NEPA team arbitrarily and capriciously chose to analyze and consider economic effects to the counties surrounding the allotments and to the permittees in response to their request for inclusion of such information. But, similar requests for analysis and disclosure of economic effects upon U.S. citizens and U.S. treasury were not respected. This was an act of discrimination towards a significant segment of society with reasonable fiscal concerns.

Response: The economic analyses in the EAs indicate that the scale of this action is so small as to constitute approximately 1.4% of the livestock operations of Catron County. At the state and national level this would be an insignificant part of the livestock sector of those economies. The effects on the permittees are included because they are direct and measurable as a part of the family income and are perceptible within Catron County. The effects referenced by the

appellants are indirect within the federal income tax system and do not significantly affect overall income of the U.S. Treasury due to the scale involved.

Finding: The EAs disclose detailed consideration of the social and economic effects germane to the decisions at hand. Consideration of the proposed actions at a national scale is outside the scope of the projects.

ISSUE 5 The EAs fail to present a wide range of alternatives

Contention: The EAs fail to present a wide range of alternatives in the environmental analysis process. The appellants also contend that the Forest Service has allowed inadequate access to persons other than the current permittee to contribute to alternative development.

Response: The EAs define a very broad range of alternatives. Chapter II of each EA presents up to ten alternatives and considers as many as eight of them in detail. The alternatives include one that allows no domestic livestock grazing. Other alternatives consider the terms of the existing permit; various combinations of grazing systems, permitted numbers of livestock, season of use, period of use, and protection strategies for riparian communities.

> The Luna EA alternatives in aggregate consider three grazing strategies: rest rotation, deferred, and modified deferred; six levels of livestock use: 0,1660, 1831, 2000, 2305, and 2332 animal unit months; four seasons of use: none, year long, 7.5 months, and 6.5 months; and three riparian protection strategies: complete non-use, riparian pastures with 25% allowable use, and riparian exclosures within grazed pastures. The riparian strategies also target the more sensitive riparian areas for priority protection (Doc. 95).
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> The Spur Lake Allotment EA considers seven alternatives, five in detail. These consider grazing levels of 0, 8867, 5198, 6878, and 6861 AUMs with grazing periods of 5-12 months (Doc. 110).
>
> The Sanchez Allotment EA considers seven alternatives, in detail. These alternatives consider grazing of two different classes of livestock at several levels: 0, 759, 461, 449, and 570 AUMs. The periods of use considered include: 0,6, and 12 months (Doc. 104).
>
> Gallo Mountain Allotment EA considers seven alternatives, four in detail. Grazing seasons of 0 and 5 months are examined using utilization levels of 25-35%. Cattle stocking levels include 0, 3150, 1515, 1575, and 2317 AUMs (Doc. 97).
>
> The Demitrio Allotment EA considers stocking levels of 0, 3579, 2034, and 2848 AUMs using various management strategies (Doc. 89).

The process records include documents that track the input in several forms received during the scoping process. Public input can be easily tracked between the versions of the EAs released for comment and that which the Decision Notices/ FONSIs finally considered. The NEPA team developed a broad range of alternatives that had discernibly different environmental effects. The consideration of no grazing requested by the appellants is displayed in the EAs.

The process records include specific documentation of how input from the public or other agencies was processed. These documents include comment aggregation documents (Gallo Mountain Docs. 19, 38, 60; East and West Demetrio Docs. 8, 32, 54; Sanchez Docs. 27, 46, 69; Spur Lake Docs. 33,52,75; Luna Docs. 8, 30, 60).

Finding: Contrary to the appellants' assertion, the EAs exhaustively explore a wide range of reasonable alternatives. These allow for a reasoned choice of federal actions. The Interdiscliplinary Team allowed appropriate access to all members of the public in the alternative development process and sufficiently considered their input. No violation of NEPA has occurred.

ISSUE 6 Sustainability

Contention: The Forest Service is legally obligated to manage National Forests in a sustainable fashion. The decisions fail to assure that sustainability will be achieved even though they claim that sustainability will be achieved. The appellant further cites a FOIA response that the Forest Service could offer no such assurance.

Response: The EAs and the DN/FONSIs use extensive sets of data, reports, and evaluations to conclusively demonstrate that components of the environment individually and collectively will not be subject to significant adverse effects. The records demonstrate the Forest Service has monitored conditions on the allotments for forty years. On the Luna allotment the ratings for soil, range, and riparian conditions have steadily improved over that period. The other allotments have sufficient ground cover to protect soil resources on the majority of sites. The alternatives in each EA compare adjustments in the amount of grazing, its timing, grazing system, and class of livestock to evaluate other strategies. The decisions, as supported by the analyses, achieve the best combination of uses. Vegetative cover is improving or will improve over the allotments. Stream flow and ground cover characteristics indicate stable to improved watershed conditions exist, or will exist within 10 years, which will produce improved watershed conditions, high aquatic/ riparian habitat quality, and enhanced productivity of many wildlife habitats. Monitoring provisions are included in all alternatives to assist in validation or correction of the adopted strategies (Gallo Mountain Docs. 97, 98; East and West Demetrio Docs. 89, 90; Sanchez Docs. 104, 105; Spur Lake Docs. 110, 111; Luna Docs. 95, 96).

Finding: The IDT appropriately considered the effect of the proposed action on the inherent productivity of the land and concluded that it would be maintained and improved.

ISSUE 7: Range suitablity.

Contention: Appellants contend that suitability analyses have not been performed to determine if the Quemado allotments are actually suitable for livestock grazing.

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, 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 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 decisions are not premature.