



**United States
Department of
Agriculture**

**Forest
Service**

**Southwestern
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File Code: 1570-1

Date: April 27, 2000

Thomas Manning
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Silver City, NM 88061

Certified Mail-Return Receipt Requested
Z 555 042 050

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

Certified Mail-Return Receipt Requested
Z 506 822 178

Re: Appeals #00-03-00-0046-A215 Alexander, #00-03-00-0047-A215 Corner Mountain, #00-03-00-0048-A215 Deep Canyon, #00-03-00-0049-A215 Eagle Peak, #00-03-00-0050-A215 Govina, and #00-03-00-0051-A215 McCarty Allotment Decisions, Reserve 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 Gardner issued decisions on December 13, 1999, for the above named allotments. The decisions resulted in the selection of the following alternatives and authorizations:

McCarty Allotment, Alternative C, which authorizes incidental use (68 animal unit months).

Eagle Peak Allotment, Alternative D, which authorizes 90 head of cattle (cow/calf) to graze yearlong.

Alexander Allotment, Alternative C, which authorizes 220 head of cattle (cow/calf) to graze yearlong.

Corner Mountain Allotment, Alternative B, which authorizes a range of livestock numbers (not to exceed 407 animal unit months) to graze from April 1 through July 31, August 1 through November 30, or complete rest in accordance with a 3-year modified, rest-rotation grazing management system. The Corner Mountain Allotment is a form of grass bank available to permitted cattle from other allotments.



Govina Allotment, Alternative B, which authorizes 105 head of cattle (cow/calf) to graze yearlong.

Deep Canyon Allotment, Alternative E, which authorizes 228 head of cattle (cow/calf) to graze from November 1 through April 15 annually.

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 (ARO) recommended that the Responsible Official's decisions be affirmed and that your requests 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 ARO also recommended; 1) the importance of adhering to utilization standards be emphasized in my decision and, 2) inconsistencies between the allotment decisions for Eagle Peak, and Alexander Allotments and the biological assessments of record be addressed in my decision.

APPEAL DECISION

After a detailed review of the records and the Appeal Reviewing Officer's recommendations, I am affirming the Responsible Official's decisions with instructions concerning the above named allotments, which authorize grazing and implementation of management actions.

By this letter I am instructing the Responsible Official to monitor the allotments sufficiently to document use levels as cattle move through an allotment, and to ensure domestic cattle are removed from pastures before overall utilization levels are exceeded. If monitoring indicates the established stocking rates cannot be sustained over time then NEPA analyses need to be initiated and further adjustments in management instituted.

I am also instructing the the Responsible Official to resolve inconsistencies between the decisions for Eagle Peak and Alexander Allotments and the biological assessments of record as follows: 1) within 30 days obtain concurrence from the Fish and Wildlife Service on the decisions for the Eagle Peak and Alexander Allotments; or 2) within 30 days issue new decisions

for the Eagle Peak and Alexander Allotments which are consistent with the biological assessments of record. The Responsible Official must provide documentation of compliance with these instructions to the Appeal Reviewing Officer.

My decision constitutes the final administrative determination of the Department of Agriculture [36 CFR 215.18(c)].

Sincerely,

/s/ Dale Fabian (for)
JAMES T. GLADEN
Appeal Deciding Officer
Deputy Regional Forester, Resources

Enclosure

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

REVIEW AND FINDINGS

of the

Thomas Manning and Gila Watch Appeals**#00-03-00-0046-A215, Alexander Allotment Decision****#00-03-00-0047-A215, Corner Mountain Allotment Decision****#00-03-00-0048-A215, Deep Canyon Allotment Decision****#00-03-00-0049-A215, Eagle Peak Allotment Decision****#00-03-00-0050-A215, Govina Allotment Decision****#00-03-00-0051-A215, McCarty 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 analyses of site specific environmental effects of the proposed actions.

Response: The EA for the Corner Mountain Allotment (Doc. 188, Chapter III, page 57) notes this allotment has more perennial water than other allotments on the Reserve District with three perennial streams bisecting the allotment, South Fork Negrito Creek, Rocker Canyon and Beaverdam Canyon. The EA also notes (page 48) “any of the alternatives would do a good job of maintaining or improving watershed and riparian conditions over the allotment.”

A 3-year modified, rest-rotation grazing management system was identified for the selected alternative which provides growing season rest from livestock 2 years in 3 and complete rest from livestock every third year (Doc. 188, Chapter II, page 11). The guidelines (Doc. 188, Chapter II, page 12) for forage utilization in key areas would be 35 percent allowable use during the growing season and 45 percent allowable use during the dormant season. Utilization of woody riparian species would be 15 percent. The Allotment Management Plan (Doc. 65, IV Monitoring and Inspections) states that if these use levels are exceeded on any one key area, livestock will be moved to another area of the pasture where actual use is less than allowable use. If all the remaining key areas in the scheduled pasture are at maximum use, livestock will be required to be moved prematurely to the next scheduled pasture.

The Decision Notices and Findings of No Significant Impact for the Govina, Alexander, Deep Canyon, Eagle Peak, and McCarty allotments (Doc. 270) disclose the primary issue of non-compliance with the Gila National Forest Plan. This is evidenced by the issues of watershed health, riparian health, and threatened and endangered species habitat, that have been addressed by the construction of riparian fencing along the length of the Tularosa and San Francisco rivers

which occur within these allotments. This is further evidenced by the implementation of utilization standards designed to meet resource objectives. The riparian section of these same documents notes the definition of riparian encompasses perennial springs.

The guidelines for forage utilization in key areas (Doc. 225, Chapter II) are 35 percent allowable use during the growing season and 45 percent allowable use during the dormant season for all but the Alexander Allotment which has an allowable use of 40 percent during the growing season and 45 percent during the dormant season. In order to meet the overall utilization requirements, at least 75 percent of the monitoring sites must have utilization rates less than or equal to the allowable use guidelines. If utilization was found to exceed 60 percent on any single key area monitoring site during the use period, livestock would be moved to a portion of the pasture where actual grazing use is less than allowable use. If all remaining key areas in the grazed pasture were at allowable use, livestock would be required to be moved to the next scheduled pasture. If utilization exceeds the allowable use guidelines for 2 consecutive years, or any 3 years in a 10 year period, management changes would be instituted to reduce utilization.

Findings: The interdisciplinary 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. Isolated springs and seeps not specifically analyzed are covered by the utilization and monitoring guidelines.

ISSUE2: The EAs failed to take a hard look at woody encroachment on the Reserve allotments.

Contention: The appellants assert that woody vegetation encroachment is a significant issue, therefore, it was arbitrary and capricious to consider livestock grazing outside the scope of woody encroachment treatment analyses. The appellants also assert that the Forest Service cannot support the claim that utilization rates will not inhibit the ability of fire to carry, and that the analyses ignore the cumulative impacts of woody encroachment.

Response: A review of the records disclose that these are not woody species encroachment analyses. Rather, the decisions to be made are; 1) if grazing should be authorized, 2) how it should be authorized and, 3) what mitigation measures, including best management practices and standards for protection of threatened and endangered species, would be implemented (McCarty, Eagle Peak, Alexander, Govina, Deep Canyon Doc. 225; Corner Mountain Doc. 188).

The proposed actions authorize specified numbers of livestock under a specified management system, for a ten year period. The methodology for identifying significant issues is explained in the EAs. Significant issues had to fall within the scope of the analyses. The Responsible Official appropriately determined woody encroachment was an issue that was outside the scope of the proposed actions (Doc. 270). However, NEPA requires that the effects of the proposed action on soil and vegetation, including pinyon-juniper, be disclosed.

The IDT concluded that under all action alternatives grazing as proposed would reduce fine fuels to varying degrees. This would result in patchy fuel continuity and the failure of fire to burn at the sufficient intensity to meet management objectives. The IDT also identified the need for

pasture rest to accumulate sufficient fine fuels to increase the probability of effective fire treatment (McCarty, Eagle Peak, Alexander, Govina, Deep Canyon Doc. 77).

Conversion of sheep to cattle, fire management policies, and grazing, are identified as factors which have contributed to the encroachment of pinyon-juniper and ponderosa pine forests. Currently, grasslands on the Reserve Ranger District are described as limited and continuing to decrease. The IDT concluded that none of the action alternatives would have an effect on pinyon-juniper and pine encroachment that has already occurred. They also concluded that by limiting the spread of fire, cattle grazing will contribute to the further proliferation of woody species (McCarty, Eagle Peak, Alexander, Govina, Deep Canyon Doc. 225; Corner Mountain Doc. 188).

Finding: While the effects of woodland encroachment are disclosed, the lack of a proposal for active manipulation of vegetation is appropriate given the proposed action. The scope of the analyses are within the Responsible Official's discretion. However, the limitation of the scope to grazing in these analyses 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 economic analyses were inadequate.

Contention: Appellants contend that the economic analyses were inadequate, that “the Forest failed to analyze economics as they pertained to a broad spectrum of the American Public...”.

Response: The record clearly shows that the economic analyses were performed adequately within the scope of the decisions. The analyses demonstrated economic effects to the permittees, local communities, and to the counties. The financial efficiency analysis addressed all key efficiency indicators for both the Forest Service and the permittees. Analysis of economic effects to all taxpayers and to all potential users is not within the scope of these decisions. Planning is two-tiered at the Forest level. Economic analyses of alternative land uses is done at the programmatic level during development or revision of the Forest Plan (NFMA). Economic analyses for these allotments is done at the project level (NEPA), and should clearly be limited in scope.

Finding: The economic analyses conducted in connection with project-level NEPA planning for these allotments, were adequate and addressed all significant issues within the scope of the decision.

ISSUE 4: Sustainability

Contention: Appellants contend that “the Decisions failed to assure that sustained yield will be achieved.”

Response: The Decisions explicitly state that the selected alternatives were chosen because they “will move the resource conditions on the allotment[s] toward the desired resource conditions

outlined in the Forest Plan... while providing grazing opportunities for the permittees. Specifically, the riparian vegetation will improve, threatened and endangered species habitat will be protected, and watershed health and water quality will improve.”

For all allotments in these analyses, Chapter III of the EAs indicates that the existing vegetation condition is currently either stable or improving. In spite of this, every alternative selected resulted in a *decrease* in allowable use (in either time or numbers) from the present, in order to explicitly ensure sustainability of these stable or improving conditions. In addition, fencing riverine riparian areas off from grazing was added as an additional mitigation measure for every allotment where this condition was applicable. Furthermore, monitoring provisions have been identified in each EA for every allotment, to ensure that BMPs are followed and site productivity is maintained.

Finding: Contrary to appellants’ assertion, the Responsible Official selected alternatives to implement that would explicitly ensure that ecosystem health and site productivity will be sustained within all allotments.

ISSUE 5: Range suitability.

Contention: Appellants contend the District failed to perform suitability analyses on these allotments.

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.