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File Code: 1570-1/2200

Date: December 16, 2002

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Center For Biological Diversity  
PO Box 710  
Tucson, AZ 85702-0710

**CERTIFIED MAIL – RETURN  
RECEIPT REQUESTED  
NUMBER: 7000 2870 0000 1135 2994**

RE: Appeal #03-03-00-0007-A215, Kelly Allotment Decision, Glenwood Ranger District,  
Gila National Forest

Dear Mr. Taylor:

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 Raley issued a decision on September 27, 2002, for the Kelly Allotment. The decision resulted in the selection of the following alternative and authorization:

Kelly Allotment, Alternative 5, which authorizes 0 to 104 head of cattle (cow/calf) to graze between 0 and 12 months annually.

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; and (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 Kelly 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/ Abel M. Camarena  
ABEL M. CAMARENA  
Appeal Deciding Officer,  
Deputy Regional Forester

Enclosure

cc: Larry Raley, David M Stewart, Stephen G Libby, Christina Gonzalez

## **REVIEW AND FINDINGS**

**of the**

### **Center For Biological Diversity Appeal**

#### **#03-03-00-0007-A215 Kelly Allotment Decision**

**ISSUE 1** : The Decision Notice is not tiered to a valid Forest Plan.

**Contention:** The appellant contends that 15 years have passed without the mandatory revision of the forest plan required under the NFMA; therefore, the forest plan is outdated with respect to grazing and no longer in compliance with NFMA.

**Response:** There are no statutes or regulations that describe an expiration date for Land and Resource Management Plans. The Gila 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 2**: The Forest Service failed to take a “hard look” at the grazing actions, as NEPA requires.

**Contention:** Failure to consider current science. The appellant contends the agency did not consider the impacts of global warming and impacts of the proposed action on archaeological resources, soils, vegetation, and rodents in the EA.

**Response:** Current science was reviewed and disclosed in the EA and supporting documents. The CBD comment letter made a variety of points using citations. The EA response to comments (Doc. 79) refers to the record on file and bibliographies in specialist reports. The record focused on site-specific findings on range conditions and effects of alternatives and not a point-by-point review of every citation listed by appellant.

The impacts of global warming and drought on grazing in the southwest in general is outside the scope of this project EA; however, discussion of current conditions and effects of drought are found in the range report (Doc. 51).

The impacts of the proposed action on archeological resources were analyzed and disclosed in the cultural resource report (Doc. 69) and summarized on page 26 of the EA. Findings of previous surveys within the allotment were reviewed. No disturbance from grazing-related activities to any of the recorded heritage sites has been observed. The cultural resource report

and a summary of potential effects were provided to the State Historical Preservation Officer SHPO concurred that the undertaking will have no effect on historic properties.

Effects to soils and vegetation are disclosed on pages 6 through 7 of the EA. The analysis is included in the cumulative watershed effects document (Doc. 61.1 in record). This includes a review of enclosure studies across the Forest; that is, a site-specific review of grazing effects. Transect monitoring information and revegetation potential is discussed.

The point about science of rodents and diversity is one that relates to Management Indicator Species (MIS) selection across the Forest and is outside the scope of this project. The MIS assessment for this project is addressed under Issue 7.

**Finding:** The Responsible Official relied on Forest experts who reviewed pertinent science and site-specific information for effects analysis. The EA met the standard of disclosure for an informed decision and was adequate to determine whether the actions would have a significant environmental effect or not.

**ISSUE 3:** The Forest Service made an irrational decision.

**Contention:** The appellant contends, “The decision does not meet the high standards of the Multiple Use Sustained Yield Act that the agency put in play the combination of uses that ‘will best meet the needs of the American people...without impairment of the productivity of the land, with consideration being given to the relative values of the various resources, and not necessarily the combination of uses that will give the greatest dollar return or the greatest unit output.’” The appellant argues the Forest Service has not chosen the optimal alternative (that is, to end grazing based on special economic interests of the permittee).

**Response:** The EA purpose and need statement is to determine a suitable level of livestock management (EA, p. 1). The analysis under NEPA is also required under a court agreement. A determination of agency policy of grazing on National Forest System lands is outside the scope of this decision. The Gila Forest Plan allocated lands for grazing activity, balancing permitted livestock with grazing capacity (Record of Decision, Gila LRMP, 1985).

**Finding:** The decision is rational and follows the direction in the Gila Forest Plan.

**ISSUE 4:** The Forest Service has violated the Endangered Species Act.

**Contention:** The appellant contends that the finding of no adverse affect to the loach minnow and no adverse affect to critical habitat for bach minnow and spikedace and the concurrence by the U.S. Fish and Wildlife Service are arbitrary and capricious.

**Response:** In accordance with Forest Service policy and the Endangered Species Act, a Biological Evaluation for the Kelly Allotment was prepared (Docs. 52 and 65), and concurrence with those determinations of effects was granted by the U.S. Fish and Wildlife Service (Doc. 80).

**Finding:** All legal requirements of the Endangered Species Act have been met.

**ISSUE 5:** The Forest Service failed to implement Forest Plan grazing utilization limits.

**Contention:** The appellant contends the proposed action creates an entirely new stubble height criterion.

**Response:** The grazing guidelines in the 1996 Forest Plan Amendment are only applicable to site-specific allotment grazing decisions in the event grazing utilization standards are not developed during the site-specific NEPA process. The stubble height developed during the NEPA process is consistent with conservative intensity grazing guidelines published by Dr. Jerry L. Holechek and Dr. Dee Galt, New Mexico State University (Doc. 58).

**Finding:** The Responsible Official's decision is consistent with the Forest Plan.

**ISSUE 6:** The proposed action would overstock the allotment.

**Contention:** The appellant contends by failing to adjust stocking levels to correct poor range condition, the Forest Service has violated the Gila Forest Plan.

**Response:** The environmental effects analysis indicates plant species composition, vigor of forage plants, and soil productivity will improve and vegetative ground cover will increase. Range condition trend will also improve. Additionally, increased ground cover will result in reduced sheet, rill, and gully erosion. Gully walls will eventually become rounded, head cuts will stop, and vegetation will stabilize gully walls and drainages. The Responsible Official's decision provides maximum management flexibility to ensure desired resource conditions are achieved. A new term grazing permit will provide for a range of numbers from 0 to 104 head of cattle and a variable season of use of 0 to 12 months. Residual stubble height will be maintained on key species. The stubble height is consistent with conservative intensity grazing guidelines published by Dr. Jerry L. Holechek and Dr. Dee Galt, New Mexico State University. Other management practices include pre-, mid-, and post-season monitoring for each pasture. Additional safeguards include: subsequent growing season deferment if minimum stubble heights are exceeded in a key area in a given pasture and removal of livestock from the allotment when minimum stubble heights have been met in all pastures and the scheduled deferment in the rotation system cannot be achieved (Docs. 58; 65). Initial capacity estimates are based on production utilization studies conducted on the Kelly Allotment between 1971 and 1973. This data was updated in 1998 and 1999 (Doc. 51). The validity of these estimates will be determined through future monitoring.

**Finding:** The selected alternative will result in an upward trend in range conditions with continued improvement throughout the life of the ten-year permit.

**ISSUE 7:** The Decision Notice fails to quantify population trends for MIS.

**Contention:** The appellant contends population trends for MIS have not been quantified in accordance with recent case law and that the analysis fails to show that continued grazing at planned levels would halt observed declines of MIS known to be affected by cattle.

**Response:** Population trends are discussed in the EA for the Kelly Allotment (Doc. 65) and in the MIS Report (Doc. 52.2). The Corner Mountain decision (Civil No. 01-1106 WJ/RLP ACE) sets the standard for this analysis. MIS, especially migratory birds, are affected by a host of factors far outside the purview of the National Forest. Biologists analyze what the effects of the project are at the Forest level for MIS, in accordance with CFR 36.219.19. It would not be reasonable to expect a single project to halt a perceived decline in an individual species. However, cumulative effects of the proposed action are discussed (Doc. 52.3).

**Finding:** Population trends for MIS appropriate to the Kelly Allotment have been analyzed and disclosed. The standards set forth in the Corner Mountain decision have been met.

**ISSUE 8:** The analysis of archaeological impacts is inadequate.

**Contention:** The appellant contends the analysis of archeological impacts is inadequate. The appellant further contends the programmatic agreement is outdated and contrary to law.

**Response:** Impacts of the action on archeological resources were analyzed and disclosed in the cultural resource report (Doc. 69) and summarized on page 26 of the EA. The findings of previous surveys within the allotment were reviewed. No disturbance from grazing-related activities to any of the heritage sites has been recorded. The cultural resource report and a summary of potential effects were provided to the SHPO. SHPO concurred that the proposed undertaking would have no effect on properties that might be eligible for the National Register of Historic Places.

The appellant's contention that the programmatic agreement is outdated and contrary to law is outside the scope of this project.

**Finding:** The analysis of archaeological impacts is adequate and in compliance with NHPA.

**ISSUE 9:** The FONSI is in error.

**Contention:** The appellant contends an environmental impact statement must be prepared for the allotment, because ongoing grazing has already caused significant environmental impacts and may continue to do so. Three points were listed: (1) controversy, (2) precedent setting, and (3) cumulative effects.

**Response:** No scientific controversy exists. This type of activity (grazing) is historic and effects have been measured and analyzed for several years. This activity is also not precedent-setting. (Decision Notice and FONSI; Doc. 81) Cumulative effects for the watershed were disclosed for the larger 5<sup>th</sup> code watershed at 232,580 acres (Middle San Francisco), and for the 24,500-acre project area (Doc. 61.1).

**Finding:** The FONSI reviews the points of significance and finds none. The finding is detailed, informative, and meets the requirements of NEPA.