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Department of
Agriculture

Forest
Service

Southwestern
Region

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File Code: 1570-1

Date: July 27, 1999

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

Certified Mail-Return Receipt Requested
Z 506 822 235

Re: Appeal #99-03-00-0053-A215, Animas/Cave Creek 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 Animas/Cave Creek allotment.

BACKGROUND

District Ranger Paxon issued the decision on April 28, 1999, for the Animas/Cave Creek allotment. The decision resulted in the selection of the following alternative and authorization: Animas/Cave Creek allotment, Alternative E, which authorizes 120 head of cattle (cow/calf) to graze for 3 months (September to November).

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 by Ranger Paxon 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 record and the Appeal Reviewing Officer's recommendation, I affirm the Responsible Official's decision concerning the Animas/Cave Creek Allotment, which authorizes grazing and implements 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 #99-03-00-0053-A215

regarding

Animas/Cave Creek Allotment Decision

ISSUE 1: The Forest Service violated the National Forest Management Act (NFMA) and the National Environmental Policy Act (NEPA).

Contention: Appellant contends that NFMA and NEPA were 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. 319.20". Appellant further contends that regulations at 36 CFR 219.3 require the project environmental assessment (EA) to address the economic and environmental consequences and the alternative uses foregone. Absent this suitability analysis, the appellant contends that the Forest Service failed to discharge its obligation under NEPA 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. The Forest Service operates within a two-tiered planning and decision making process. The first level is the programmatic forest plan level and the second is the site-specific project level, such as a grazing allotment. There is a distinction between forest planning and project planning. The appellant contends that there are regulatory requirements that the agency must fulfill in regard to completing a suitability analysis, in which the appellant cites 36 CFR 319.20 as the regulation. There is no regulatory requirement that compels the Forest Service to conduct a suitability analysis and determination at an allotment or project planning level.

The purpose of the NFMA regulations (36 CFR 219) is to "... set forth a process for developing, adopting, and revising land and resource management plans for the National Forest System..." Appellant references the NFMA regulations' suitability requirement which applies to forest plan level decisions, not project level decisions. The forest plan is the proper and only level at which suitability per the requirements of 36 CFR 219.20 is made. The Gila National Forest Plan (Docs. 04-04, 07-01, 07-02, 07-03) identified the Animas/Cave Creek allotment as suitable for livestock grazing.

The forest planning process undertook a quantitative analysis fully incorporating economics into the process. The Forest Plan complies with the requirements outlined in 36 CFR 219.20 through the analysis process applied in preparation of the Forest Plan (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. As previously described, all requirements for suitability under the provisions of 36 CFR 219.20 were met with 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 violated the 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 Responsible Official found the selected alternative to be consistent with the Forest Plan (Doc. 02-01, Gila Forest).

Riparian condition (Doc. 04-04, 21-01) on the Animas/Cave Creek allotment rated two sites as marginally satisfactory. "The Gila Forest Plan direction for riparian areas is to emphasize maintenance and restoration of healthy riparian ecosystems through conformance with forest plan riparian standards and guidelines" (Doc.04-04). The Gila Forest Plan also directs that grazing in riparian zones will be managed to provide for the maintenance and improvement of riparian areas, which clearly shows that riparian areas can be grazed under managed conditions.

The effects of the alternatives on wildlife species were analyzed and protective measures for riparian areas were proposed for implementation such as, reduced utilization standards, and adjustments to stocking or management system (Docs. 04-04).

Finding: The decision provides for adequate protection and improvement in riparian and upland habitats consistent with the Gila National Forest Plan. The Responsible Official reached a reasonable conclusion, based on the effects of the selected alternative, that the projected habitat conditions would maintain viability of all wildlife species and maintain or improve riparian conditions.

ISSUE 3: The Forest Service violated 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, was not considered.

Response: Agency policy requires, at a minimum, consideration of a no-action alternative, the proposed action, and a no change (continuation of current management) alternative (FSH 2209.13 Sec. 91.24). 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 either the no grazing or current management alternatives.

The Animas/Cave Creek analysis considered seven alternatives, however, two were dropped from detailed study: Alternative A as the No Action (no grazing); Alternative B as the Current

Permit; Alternative C as the No Change (current management); Alternative D alternative proposed by the permittee; and Alternative E 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 4: The Forest Service violated NEPA in failing to consider and adequately disclose 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 NEPA.

Response: Cumulative effects are addressed in the Animas/Cave Creek EA (Docs. 04-04, pg. III-29). The allotment lies entirely within the Caballo 5th Code watershed, which is 215 square miles in size. The direct, indirect, and cumulative watershed effects were analyzed at the 5th code watershed scale (Doc. 21-04). The analysis identified activities contributing to cumulative watershed effects, which includes; livestock grazing, deer and elk grazing, roads and trails, and fire. The cumulative watershed effects analysis includes 11 references consisting of; professional articles, technical reports, and management guidelines for managing grazing in riparian, woodland, and grassland areas. The EA states that grazing (livestock and elk) impacts are acceptable in terms of water quality, although other activities may negatively impact water quality. The EA concluded that no significant cumulative impacts are anticipated on the soil, water, and air resources.

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

Finding: The cumulative effects of the proposed action on the Animas/Cave Creek allotment were adequately addressed in the project record.

ISSUE 5: The EA violates the Clean Water Act.

Contention: The appellant alleges that the Forest Service failed to require the permittee to obtain a water quality certification from the state of Arizona for the allotment, as required under Section 401 of the Clean Water Act. Appellant also alleges that implementation of the decision will degrade water quality limited streams, in violation of State water quality standards.

Response: In regard to the first point, there is no requirement to obtain certification from the State of Arizona for activities occurring in New Mexico.

Early in the process, the Gila Forest considered stream non-attainment status as a significant issue for its allotment planning efforts (Doc. 04-04, p.II-11, Doc. 21-02). The project record reveals that the appropriate procedures for contacting and consulting the New Mexico Health and Environment Department, as outlined in our Interdepartmental Agreement, were followed (Doc. 11). The project record contains evidence of the incorporation of water quality mitigation measures (Best Management Practices or BMP's) throughout the planning and decision making processes (Docs. 02 and 04-04). The alternative selected responds to the water quality issue through promoting grazing management changes that will have a positive affect on improving ground cover, reducing erosion and protecting/improving riparian areas (Doc. 02-01)

Finding: Appropriate procedures were followed and adequate mitigation is planned for the Animas/Cave Creek allotment decision. There is no violation of the Clean Water Act.

ISSUE 6: 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: A decision concerning highest and best use was made during development of the Forest Plan. 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 EAs depict that site productivity will be maintained in some areas and likely improve in most other areas (Docs. 02-01, 04-04). Generally upland and riparian watershed conditions are expected to improve due to decreased grazing use (permitted numbers, use levels) and management changes (season of use, deferment, or rest) for the Animas/Cave Creek analysis . The amount and diversity of riparian vegetation is expected to improve within this allotment.

Finding: A decision concerning the highest public benefit is outside the scope of the analysis under review. The Responsible Official's decision will not impair land productivity for the Animas/Cave Creek allotment.

ISSUE 7: 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 indicates that the selected alternative will remedy the resource concerns on the allotment (Doc. 04-04). The EA displays the effects of implementing the proposed action and alternative. The Responsible Official's decision rationale reflects consideration of the effects as disclosed in the EA and DN/FONSI (Doc. 02-01).

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

ISSUE 8: The Forest Service decision violates the Wilderness Act .

Contention: Appellant contends that allowing grazing of allotments, especially the Animas/Cave Creek allotment, that contains wilderness areas, violates the mandate of the Wilderness Act. The appellant further asserts that all vacant allotments within wilderness areas should be devoted exclusively to wilderness values.

Response: Livestock grazing was authorized on the Animas/Cave Creek Allotment prior to 1920 (Doc. 04-04). Grazing 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.

Finding: The selected alternative on the Animas/Cave Creek Allotment is consistent with the Wilderness Act.