



United States
Department of
Agriculture

Forest
Service

Southwestern
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File Code: 1570-1 (FOR)

Date: July 27, 1999

Mr. Brian Segee
Southwest Center for Biological Diversity
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Certified Mail - Return Receipt Requested
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Re: Appeal #99-03-00-0061-A215, Corduroy Allotment, Black Range Ranger District, Gila National Forest.

Dear Mr. Segee:

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

BACKGROUND

District Ranger Paxon issued the decision on April 22, 1999, for the Corduroy allotment. The decision resulted in the selection of the following alternative and authorization: Corduroy allotment, Alternative D, which authorizes 1,134 head of cattle (yearlings) to graze for 6 months (April through October) and 10 horses to graze yearlong.

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, you were contacted on June 24, 1999, in an attempt to seek informal resolution of the appeal. The record reflects 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, including the recommendations of the Appeal Reviewing Officer. My review decision incorporates the appeal record.

APPEAL REVIEWING OFFICER'S RECOMMENDATION

The Appeal Reviewing Officer has recommended that the Responsible Official's decision on the Corduroy allotment be reversed. The Appeal Reviewing Officer concluded that the effects of the selected alternative are not consistent with the allowable use levels adopted in the decision. The utilization guidelines of 35% for uplands and 25% for riparian areas are within Forest Plan guidelines, however, the effects disclosed in the EA and record indicate that considerably more utilization will occur resulting in deterioration of range and riparian condition and trend. This decision is not consistent with the Forest Plan and does not meet the purpose and need for the proposed action.



APPEAL DECISION

After a detailed review of the record and the Appeal Reviewing Officer's recommendation, I reverse the Responsible Official's decision concerning the Corduroy Allotment which authorizes grazing and implements management actions. By copy of this decision the Responsible Official is instructed to conduct another analysis of the proposed action and clearly identify the utilization levels which will occur. My review and findings concerning the issues raised in your appeals are attached.

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
Southwest Center for Biological Diversity's Appeal #99-03-00-0061-A215
regarding
Corduroy Allotment Decision

ISSUE 1: Corduroy range analysis violates the Endangered Species Act (ESA).

Contention: Appellant alleges that the Corduroy Range Analysis violates ESA because the project fails to meet guidance criteria for determining effects to threatened and endangered species and fails to recover all endangered species.

The appellant further clarifies this contention by stating the application of the guidance criteria with respect to the loach minnow and spikedace presents clear violations (Appeal, Contention 1 (A), pages 4-6) and the Corduroy range analysis ignores potential and suitable habitat on the allotment (Appeal, Contention 1 (B), page 7).

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 2: Corduroy range analysis violates the National Forest Management Act (NFMA).

Contention: Appellant alleges that the Corduroy Range Analysis violates NFMA because; the project fails to strive to attain good to excellent range conditions, fails to maintain and restore riparian conditions, fails to assure the recovery and continued existence of threatened and endangered species, and fails to improve all riparian areas to satisfactory or better condition, as required in the Gila National Forest Land and Resource Management Plan (LRMP).

Response: The EA (pg III-16) indicates physiological growth requirements of forage plants would be met and Alternative D would improve reproductive capacity of the grass plants, the forage production, and the forage frequency. The Decision Notice further states that excluding livestock from the riparian area of Beaver Creek, allowing additional rest, changing the class of livestock and reducing the season of use to 6 months would address watershed and riparian conditions.

However, the EA and vegetation effects analysis indicate that the effects of the selected alternative are not consistent with the allowable use levels adopted in the decision. The table on page III-18 of the EA displays expected utilization levels for the selected alternative for specific key areas which exceed the targeted utilization guidelines. In addition, the Corduroy vegetation effects analysis indicates that overall range condition and trend for three separate range clusters are expected to decline as a result of implementing the selected alternative.

Finding: The decision purports to provide for protection and improvement of upland range and riparian conditions, however, anticipated effects disclosed in the EA will exceed utilization guidelines. If these elevated utilization levels are allowed, the grazing activity would not be in compliance with the Forest Plan and upland range and riparian conditions would not be improved or maintained.

ISSUE 3: Corduroy range analysis violates the National Environmental Policy Act (NEPA).

Contention: Appellant alleges the Corduroy Range Analysis violates NEPA because; the preferred alternative will not improve range conditions, the EA fails to describe the affected environment, and the Forest Service failed to take a "hard look" at the environmental consequences.

The appellant further clarifies this contention by stating the conclusion of "reducing AUMs while condensing the season of use will help improve range condition" is fundamentally flawed (Appeal, Contention III (A), pages 10-11) and the EA fails to adequately describe (Appeal, Contention III (B), pages 12-14) or analyze the effects (Appeal, Contention III (C), pages 15-16) of riparian areas and range conditions.

Response and Finding: NEPA does not prescribe a particular outcome or that any particular resource be protected, however, NFMA as discussed in issue #2 does require resource protection. Refer to issue #2.

ISSUE 4: Project violates Administrative Procedures Act (APA).

Contention: Appellant alleges that the Corduroy Range Analysis Decision Memo (Decision Notice) is arbitrary and capricious.

Response: Appellant argues the Corduroy Range Analysis and Decision Notice violate ESA, NEPA, the Gila LRMP and APA. Appellant references all of the other issues raised in the appeal as grounds for this conclusion. Reference is therefore, made to all of the other responses and findings in this administrative review.

Finding: The Corduroy analysis and Decision are not consistent with the Gila Forest Plan and do not meet the purpose and need for the proposed action.