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Department of
Agriculture

Forest
Service

Southwestern
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File Code: 1570-1

Date: August 2, 1999

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

Certified Mail-Return Receipt Requested
Z 506 822 243

Re: Appeal #99-03-00-0051-A215, Cow Creek Allotment, Silver City 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 authorizes grazing and implements a grazing management strategy on the Cow Creek Allotment.

BACKGROUND

District Ranger Engel issued a decision on May 4, 1999, for the Cow Creek Allotment. The decision resulted in the selection of the following alternative and authorization: Cow Creek Allotment, Alternative B, which authorizes 75 head of cattle (cow calf) 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, an attempt was made by Ranger Engel 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 215.7. 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 records and the Appeal Reviewing Officer's recommendations, I affirm the Responsible Official's decision concerning the Cow Creek 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/ Louis Volk Jr. for
JAMES T. GLADEN
Appeal Deciding Officer
Deputy Regional Forester, Resources

Enclosure

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

REVIEW AND FINDINGS
of the
Forest Guardians' Appeal #99-03-00-0051-A215
regarding the
Cow Creek Allotment Decision

ISSUE 1: The Forest Service violated the National Forest Management Act (NFMA) by continuing to allow cattle grazing on the allotment without first evaluating the allotment's suitability for grazing. Therefore, the choice of any alternative is premature.

Contention: Appellant contends that NFMA was 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. [3]19.20". Absent a suitability analysis, the appellant contends that the Forest Service failed to discharge its obligation under NFMA 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.

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 identified the Cow Creek allotment as suitable for livestock grazing (Docs. 04-04, 07-01, 07-02, 07-03).

The Forest planning process undertook quantitative analysis 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 (Gila Forest Plan EIS Appendix B, Description of Analysis Process).

Finding: There is no requirement to conduct a suitability analysis when conducting a National Environmental Policy Act (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 upon 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)]. Forest Plans include goals, objectives, standards, and guidelines for the protection of threatened, endangered, Forest Service sensitive, and other species and their habitat. Site-specific projects are designed under the direction provided in Forest Plans. The Responsible Official found the selected alternatives to be consistent with the Forest Plan (Doc. 02-01).

Riparian conditions on the Cow Creek allotment were determined to be fully functioning due to adequate vegetation to dissipate stream flow energy (Doc.04-04). The Gila Forest Plan promotes healthy riparian ecosystems through Forest Plan riparian standards and guidelines (Doc.04-04). The record indicates that the effects of the alternatives on wildlife species were analyzed and that monitoring will be employed to ensure continued viability of listed species and healthy riparian ecosystems. (Docs. 02-01 and 04-04,).

Finding: The decision provides for adequate protection of 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 satisfactory 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, was not considered.

Response: 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 Cow Creek analysis considered two alternatives: Alternative A, No Action (no grazing); Alternative B, No Change (current management/ Proposed Action). Although only two alternatives were considered, the record (Docs. 02-01, 21-03, 22-03) reflects that the current management for this allotment was recently developed under a Resource Protection Agreement with the permittee. Therefore, the issues for the current management and proposed action were the same. Based on this information, the Responsible Official concluded there was no reasonable basis for developing additional alternatives.

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 disclose adequately 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 Cow Creek EA (Doc. 04-04). The allotment lies entirely within the Upper Gila River 5th Code watershed, which is 376 square miles in size. The direct, indirect, and cumulative watershed effects were analyzed at the 5th code watershed scale (Doc. 21-03). The analysis identified activities contributing to cumulative watershed effects including; livestock grazing, deer and elk grazing, roads and trails, and fire. Past activities included fire and grazing. Present and reasonably foreseeable future actions included trail maintenance and grazing. The cumulative watershed effects analyses include 20 references, consisting of professional articles, technical reports, and grazing management guidelines for 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 "there are no reasonably foreseeable activities proposed within the watershed that would result in significant cumulative environmental effects".

Finding: Past, present, and reasonably foreseeable actions were considered in the analysis. The EA and record reflect an adequate analysis and disclosure of cumulative effects on the affected environment.

ISSUE 5: The EA violates the Clean Water Act.

Contention: The appellant alleges that the Forest Service failed to require the permittee to obtain water quality certifications from the state of Arizona for the allotments as required under Section 401 of the Clean Water Act. Appellant also alleges that implementation of the decisions 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 National Forest considered stream non-attainment status as a significant issue for its allotment planning effort (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) in the planning and decision making process (Doc. 04-04). The proposed alternative responds to the water quality issue by; improving ground cover, reducing erosion, and protecting riparian areas (Doc. 04-04).

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

ISSUE 6: The Decision violate the Multiple Use and Sustained Yield Act.

Contention: The appellant alleges that the decision violates the Multiple Use and Sustained Yield Act (MUSYA) 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: 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, and are outside the scope of a project level analysis.

The EA discloses that site productivity will be maintained through application of Best Management Practices (BMPs). Monitoring will be employed to ensure BMPs are effective in maintaining site productivity and to identify any necessary changes in management practices (Docs. 02-01; 04-04).

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 Cow Creek Allotment. Therefore, there is no violation of the MUSYA.

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 identified resource issues (Docs. 02-01; 04-04). The EA displays the effects of implementing the proposed action and alternatives. The Responsible Official's decision rationale reflects consideration of the effects as disclosed in the EA (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 9: The Forest Service decision violates the Wilderness Act.

Contention: Appellant contends that allowing grazing of allotments that contain 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 first authorized on the Cow Creek allotment in 1936. 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 that portion of the allotment within the Gila Wilderness area is consistent with the Act.

Finding: The selected alternative is consistent with the Wilderness Act.