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Forest
Service

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File Code: 1570-1

Date: August 2, 1999

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Re: Appeals #99-03-00-0058-A215 and #99-03-00-0059-A215 on the Cow Creek and Shingle Canyon Range Allotments, Silver City Ranger District, Gila National Forest

Dear Mr. Manning and Gila Watch:

This is my review decision on the appeals you filed regarding the decisions to authorize and manage livestock grazing on the Cow Creek and Shingle Canyon allotments.

BACKGROUND

District Ranger Gerald Engel issued a public notice of decisions for the Cow Creek and Shingle Canyon allotments on May 4, 1999. Ranger Engel selected Alternative B from each analysis which authorizes 75 (cow/calf) cattle year long on the Cow Creek allotment and up to 80 (cow/calf) cattle for four winter months on the Shingle Canyon allotment. The District Ranger is identified as the Responsible Official whose decision is subject to administrative review under 36 CFR 215 appeal regulations.

As directed in 36 CFR 215.16, you were contacted on June 28 and 29, 1999, in an attempt to seek informal resolution of the appeals. The record reflects that informal resolution of the appeals 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, including the recommendations of the Appeal Reviewing Officer regarding the disposition of these appeals. My review decision, hereby, incorporates by reference the appeal records.

APPEAL REVIEWING OFFICER'S RECOMMENDATION

The Appeal Reviewing Officer has 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 proposals were identified; (c) the proposals and decisions are 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 record.



APPEAL DECISION

After a detailed review of the record and the Appeal Reviewing Officer's recommendation, I affirm the Responsible Official's decisions concerning the Cow Creek and Shingle Canyon Allotments.

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

Enclosures

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

REVIEW AND FINDINGS**of****Thomas Manning and Gila Watch Appeals #99-03-00-0058-A215 and #99-03-00-0059-A215****of the****Cow Creek and Shingle Canyon Range Analysis Decisions****PREAMBLE**

The appellants have raised numerous procedural claims in the project appeals directly related to Forest Service planning and project level decision making utilized by the Gila National Forest in development of the Gila Land and Resource Management Plan (LRMP) and the grazing authorizations. Therefore, it is important to briefly discuss the Forest Service planning and two stage decision processes which satisfy the agency's legal obligations under the Multiple-Use Sustained-Yield Act (MUSYA), Forest and Rangeland Renewable Resources Planning Act (RPA) and the National Forest Management Act (NFMA). It is also important to distinguish between Forest Plan level decisions and project level decisions such as grazing authorizations, which implement the plan.

The MUSYA of 1960 provides for administration of National Forest renewable surface resources for multiple use and sustained yield of products and services without impairment of the productivity of the land. The Act specifically identifies these multiple uses as outdoor recreation, range, timber, watershed, wildlife and fish. The RPA and NFMA provide for development and administration of the renewable resources of the National Forest System in full accord with the concepts of multiple use and sustained yield of products and services as set forth in the MUSYA. They also provide for the development of LRMP's for each National Forest and the Forest Planning Regulations (36 CFR §219).

The approved Gila National Forest LRMP is the product of a comprehensive notice and comment process established by congress in NFMA and 36 CFR §219. The Gila LRMP Environmental Impact Statement (EIS) discloses the environmental effects along with social and economic effects of the plan. The Gila LRMP provides direction to assure coordination of multiple-use (outdoor recreation, range, timber, watershed, wildlife, fish and wilderness) and sustained-yield of products and services.

The Gila LRMP contains forest multiple-use goals and objectives, forest wide management requirements (standards and guidelines) and management areas and management area direction. Essentially the LRMP management prescriptions and forest wide direction are the "zoning ordinance" under which future decisions (projects) are made. Specific project decisions were not made in the LRMP. Projects and activities are proposed, analyzed and carried out within the framework of the plan. In addition to broad overall management direction described above, the planning process evaluated and determined lands suitable for timber production and production of forage for grazing animals in accordance with 36 CFR §219.14 & §219.20.

The Gila LRMP includes management areas and management area direction applying to future activities within management areas. The land within the Cow Creek and Shingle Canyon allotments was included in management area 5C, 7E, and 7F. Management area prescriptions

provide for range, recreation and wilderness uses among others. The Gila LRMP goals, objectives, standards, and guidelines provide for land management activities which will produce the best sustainable mix of products and services including recreation, grazing, timber, watershed, wildlife and wilderness without impairing land productivity. The evaluation of other possible land uses (requested by the appellants) was done at the Forest Plan level.

LRMP's are never complete or final, as NFMA requires plans to be maintained, amended and revised through monitoring and evaluation. 16 USC §1604(a) and §1604(f). The Gila LRMP has been amended eight times since approval in 1987. Each project proposed and evaluated under the LRMP direction must meet that direction. If the project does not comply with the LRMP direction the plan may be amended to allow for a particular project. The Responsible Official concluded that the proposed action was consistent with the LRMP direction therefore, an amendment was not necessary.

Specific project decisions, such as grazing authorizations, are developed under the umbrella direction of the Gila LRMP. These decisions are narrowly focused, to implement the Forest Plan direction for particular land areas and uses, and are subject to NEPA analysis and disclosure.

The appellants are questioning the essence of the NEPA processes employed on the grazing authorization decisions. Appellants claim that the Responsible Official failed to properly determine the scope of the action and refused to expand the scope based upon public comments. Appellants assert that many relevant issues were not given due consideration. These issues included; control of woodland encroachment, costs associated with ranching, management of elk numbers, trespass cattle, economic analysis of negative impacts on forest health, stand dynamics, dispersed recreation, hunting, fishing and general ecological costs.

As discussed above, many of the issues raised by the appellants in the NEPA process were addressed at the Forest Plan level when the Forest Plan was developed. The project analyses conducted for these grazing authorizations do not and should not address these issues. Rather the processes should address the proposed actions and determine if environmental effects of these actions will be significant. The purpose and need statements focused on the need for a grazing decision for a particular allotment. The Responsible Official defined the scope of the actions as grazing decisions and considered issues and developed alternatives within the scope of the actions. For example, the Responsible Official determined that control of woodland encroachment was outside the scope of the proposed actions because it did not address the purpose and need and was not a decision that needed to be made at this time. The limitation of the scope to grazing in this analysis does not preclude the Responsible Official from considering woodland management projects at some point in the future. Under NEPA procedures, the Responsible Official considered woodland encroachment effects, but NEPA does not require modification of the proposed actions based on the public comment if the comment is beyond the scope of the proposals. The processes which led to the decisions appropriately defined the scope, related to the need for grazing decisions and focused the analyses on only those issues within the scope.

Appellants are also concerned about the alternatives considered in the environmental assessments (EA's). Specifically, they claim that the Responsible Official did not consider a reasonable range of alternatives because many of the issues raised were determined to be outside the scope of the proposed actions. They claim that the Responsible Official violated NEPA by limiting the choice of reasonable alternatives.

Alternatives considered in the NEPA processes were developed based on the issues raised within the scope of the proposed actions. It follows then that the appellants are correct that the alternatives were constrained by the definition of the proposed actions. The Responsible Official considered only those alternatives that were responsive to the purpose and need for action. For an alternative to be considered reasonable it must be responsive to the purpose and need for action. The alternatives considered were consistent with the scope of the proposed actions and constituted a reasonable range. The Responsible Official did consider no grazing alternatives which would have provided for removal of livestock from each allotment. These alternatives were available for selection by the Responsible Official.

APPEAL ISSUES AND RESPONSES BY TOPIC

PURPOSE AND NEED

Contention: Appellants assert:

- "The EA was used as a means of justifying the desired action, rather than as an objective analysis forum" (issue 1).
- "...the FS failed to maintain objectivity by representing one portion of society at the expense and exclusion of others..." (issue 3).
- The purpose and need "...gave a slanted interpretation of applicable laws and regulations to justify continuation of livestock grazing as the primary use on the allotment" (issue 4).
- The purpose and need "...was discriminatory to a large portion of the United States citizenry for whom utilization of these National Forest lands, for livestock grazing, would not be in their best interest" (issue 5).

Response: An EA's purpose is to briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or finding of no significant impact (FONSI). It includes brief discussions of the need for the proposal, alternatives, environmental impacts, and agencies and persons consulted [40 CFR §1508.9(a)(1) and (b)].

The purpose and need statement provides the rationale behind the proposed action. The purpose and need statement explains **why** an action is being proposed. Appellants are correct in pointing out that the EA's purpose and need statements justify the proposals to continue livestock grazing, they should. The purpose and need statements cite applicable agency policy, regulation, and law. They do not suggest that grazing is, or should be the primary use. It is simply one use, for which decisions are required at this time (EA's, pp. 3-4).

Finding: The purpose and need appropriately focused the analyses on the grazing decisions to be made. The focus on the grazing decisions was not discriminatory but instead was responsive to the use under consideration.

PROJECT SCOPE

Contention: Appellants assert:

- Issues and considerations represented the interests of the ranching community to a much greater extent and were discriminatory to environmentally oriented comments (issues 6, 28, 29, 62).
- Comments were not considered, and were "...arbitrarily determined to be outside the scope of the analysis" (issues 7, 8, 16, 17, 18, 19).
- Scope of the analysis was predetermined (issue 9).
- The Forest Service failed to follow requirements enumerated in 36 CFR §219.1 (b) (issue 10).
- The Forest Service failed to consider alternatives to grazing and violated 40 CFR §1508.25 and §1501.7 (issues 11, 14, 53, 55(b), 63).
- A number of Mr. Manning's comments were not given consideration (issues 20-27).
- Woody vegetation treatments must be considered with grazing (issues 43, 44, 49).
- Pinyon-Juniper (P-J) encroachment contributes to world-wide desertification and climate change (issue 47).
- The Forest Service violated Sec. 102 (2)(E) of NEPA by not developing alternatives which address unresolved conflicts of multiple use (issue 68).
- The EA does not adequately consider "relative values of the various resources" as mandated by the Multiple-Use Sustained-Yield Act Sec. 4(a) (issue 69).
- The Forest Service has failed to consider changing needs and multiple uses on the allotments with respect to Sec. 4(a) of 16 USC 531 Appellants also cite Section 102 (2)(E) of NEPA and regulation at 40 CFR §1500.1(c), §1502.1(b) and (e) and (f), §1500.6, §1501.2(c), §1501.4(b), §1501.7(c), §1502.1, §1502.2(f) and (g), §1502.6, §1502.9(a), §1502.14(a) and (b), and §1503.4(1) (issue 64).

Response: The proposed actions are to authorize a specified number of livestock, under a specified management system, for a ten year period. The proposed actions provide a focus for the analyses of effects of these actions and alternatives. The purpose and need statements specify the underlying purpose and need to which the agency is responding, in proposing the alternatives including the proposed actions (40 CFR §1502.13). This further defines the scope of the analyses (EA's pp. 3-4). The stated decisions to be made further define the scope by detailing the components of the decisions (shingle Canyon EA pp. 4-5; Cow Creek EA pp 6-7). The scope of an analysis is within the Responsible Official's discretion. The Responsible Official has the discretion whether or not to propose actions which are similar in nature or would occur together in time or geographically.

The Responsible Official invited the participation of affected and interested parties, consistent with scoping direction at 40 CFR §1501.7 and 40 CFR §1501.4(b). Comments received in response to the proposals to authorize grazing represent both the ranching community and other

forest users (Shingle Canyon EA p. 7; Cow Creek EA p. 9 and records at 16A, 16B, 18B, and 18C). Comments were evaluated to identify issues significant to the proposals (40 CFR §1500.2(b) and (e) and §1501.7(a)(2)). The methodology for identifying significant issues is explained in the EA's (Shingle Canyon EA p. 8; Cow Creek EA p. 10). Significant issues have to meet the following criteria; 1) within the scope of the analysis, 2) not decided by law, regulation, or previous decision, 3) relevant to the decision, 4) supported by scientific analysis rather than conjecture, and 5) not limited in context, duration, nor intensity. This procedure for identifying significant issues is consistent with agency instructional materials taught and applied nationally (1900-01 Unit 6 - Issue Management, Handout 6.2).

Issues concerning alternative uses (unresolved conflicts of multiple uses) and grazing suitability were analyzed in the Gila Forest Plan EIS. This EIS also evaluated the relative values of the various resources, consistent with the Multiple-Use Sustained-Yield Act. Alternatives were developed to address these issues and a decision was documented in the Record of Decision for the Gila National Forest Plan EIS (see preamble). These issues therefore, were not considered significant in the project analyses since they were "covered by prior environmental review" (40 CFR §1501.7(a)(3)). The EA's under review are tiered to the Gila National Forest Plan EIS (Shingle Canyon EA p. 3; Cow Creek EA p. 5). Issues of a world-wide nature such as climate change and desertification are outside the scope of these analyses and are best addressed at a national or international scale. They cannot be resolved in analyses for grazing authorizations.

The record does not reflect any changes made in the proposed actions nor any significant new circumstances or information which would require revising the scope of the projects (40 CFR §1501.7(c)) (record at 16A, 16B, 18B, and 18C).

Appellants cite 40 CFR §1508.25 contending that the Forest Service must consider three types of actions, alternatives, and impacts, and that those must include other land uses. The cited regulation defines "scope" in terms of proposed actions, range of alternatives, and effects to be considered in preparation of an EIS. Forest Service policy applies this definition to the preparation of an EA as well (FSH 1909.15 Sec. 41). The three types of actions to be considered are; connected, similar, and cumulative actions. Three types of alternatives to consider are; no action, reasonable courses of action, and mitigation not in the proposal. The three types of impacts to consider are; direct, indirect, and cumulative. None of this suggests that the project scope should be expanded to include multiple-use issues which have been previously decided, as discussed above.

Regulations at 36 CFR §219 set forth a process for developing, adopting, and revising land and resource management plans for the National Forest System (36 CFR §219.1(a)). They do not apply to site specific grazing authorizations.

Appellants reference a copy of a comment letter obtained from the interdisciplinary team with notes in the margin. This was an annotated working copy (records at 16B). The Responsible Official analyzed comments on the EAs, combined those that were similar, and documented responses. Complete responses are documented in the EA's, Appendix P, attached to the DN's. Appellant Manning's comment letter contains 32 comments by his own enumeration. The interdisciplinary team analyzed the letter for content, combined some remarks, and identified 12 substantive comments within the scope of the analyses (records at 16B).

There is no Sec. 4(a) at 16 USC 531. If appellants are referring to Sec. 4(a) of the Multiple-Use Sustained-Yield Act or 16 USC 531 *in toto*, the discussion about multiple-use management is relevant to Forest Plans (see Preamble).

Pursuant to 40 CFR §1500.1(c) and §1500.2(f), the Responsible Official followed the NEPA process in making decisions on actions intended to protect, restore and enhance the environment (Shingle Canyon EA pp. 3-4; Cow Creek EA pp. 4-6 and DN/FONSI's).

Appellants cite several regulations not discussed above, which they claim were violated with respect to the scope of these analyses:

40 CFR §1502 et seq. which directs preparation of EIS's and not EA's.

40 CFR §1503.4(a)(1) which is prefaced by "An agency preparing a final environmental impact statement shall..." An EIS's were not prepared, this citation is not relevant to these analyses.

40 CFR §1500.6 which directs agencies to review their policies, procedures and regulations. Forest Service environmental policies and procedures are published in Forest Service Handbook 1909.15. These analyses are concerned with site specific grazing authorizations and are not a review of agency environmental policies and procedures.

40 CFR §1501.2(c) which directs the development of alternatives where the proposal "...involves unresolved conflicts concerning alternative uses of available resources..." See responses under the Range of Alternatives section of this document.

Finding: The analyses adequately recognized comments from both the ranching community and other forest users. Comments outside the scope of the analyses were appropriately identified as not being significant issues. The Responsible Official defined the scope of the analyses through a description of the proposed actions, purpose and need, and decisions to be made.

MULTIPLE USE SUSTAINED YIELD ACT

Contention: Appellants assert:

- Sustained-yield has not been achieved since the condition of the rangeland, in terms of watershed and long-term vegetation type stability, has not been achieved. The long-term productivity of the land has not been adequately addressed. Unsustainable capacities can be expected to result from the decision (issues 36, 48).
- The EA has presented no evidence that the recommended stocking levels and expected range condition improvement will improve situations with P-J and other woody encroachment, fire frequency and watershed conditions. An informed decision was therefore impossible (issues 1(a), 37, 38, 39, 40, 41, 42, 42(a), 50, 51, 58, 58(a)).
- The EA failed to discuss the relationship between short-term uses and long-term productivity (issue 46).

Sustained-yield is defined in the Multiple-Use Sustained-Yield Act of 1960 to mean "the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of the National Forests without impairment of the productivity of the land" (16 USC 531). The Forest evaluated the effects of livestock use of forage (the renewable resource) by looking at appropriate productivity indicators. Ground cover, infiltration, soil loss, and soil organic matter were evaluated as indicators of the hydrologic, stability, and nutrient cycling functions of the soil (records at 21). The evaluation of these conditions indicates that watershed condition would be maintained or improved and that long-term productivity would be maintained under the selected alternatives (Cow Creek EA pp. 20-21; Shingle Canyon EA p.14). The inherent potential of the soil to grow and support any desired vegetation is a more appropriate tool to measure long-term productivity than vegetation type, which is affected by climate and natural seral stage progressions.

Watershed condition was discussed in great detail in the project records (records at 21). Existing conditions were described and literature was cited where information was collected on condition changes related to grazing impacts. This information was used to estimate the effects that the alternative stocking levels and utilization rates would have on watershed condition (hydrologic, stability and nutrient cycling functions). The effects on natural fire frequencies were evaluated based on fuel availability that would be expected under anticipated utilization rates (Cow Creek EA p. 31; Shingle Canyon EA pp. 21-22, and records at 22). The most recent research findings were used by the forest and available to the responsible official.

Although there are no specific sections that describe the relationship between short-term uses and long-term productivity, it is discussed throughout the documents. The hydrology, soils and watershed sections (Cow Creek EA pp. 20-21; Shingle Canyon EA p.14) directly describe the effects of the short-term uses planned under each alternative and how they relate to long-term productivity. The FONSI's document the Responsible Official's conclusions that there are no significant effects on long-term productivity from the authorized short-term uses (records at 2).

Finding: The analyses adequately address long-term productivity of the land and the decisions comply with MUSYA.

RANGE OF ALTERNATIVES

Contention: Appellants assert:

- The Forest Service failed to consider a broad range of alternatives. Appellants suggest several grazing alternatives in their appeal (issues 54, 59, 66).
- The Rescission Act (P.L. 104-19) prevents the Responsible Official from choosing the No Action alternative, concluding that it was not viable and therefore not considered (issue 55).
- The Forest Service considered only one viable alternative (issue 57).
- The Forest Service violated 40 CFR §1506.1(a)(1) and (2) and 40 CFR §1502.2, limiting and prejudicing the choice of reasonable alternatives (issues 12, 13, 60, 61).

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). On each allotment, Alternative A represents no action. Alternative B represents the proposed action as well as current management on each allotment.

There is nothing in the Rescission Act that prevents the Responsible Official from choosing a no action alternative. P.L. 104-19 Section 504 (b) states, "Notwithstanding any other law, term grazing permits which expire or are waived before the NEPA analysis and decision pursuant to the schedule developed by individual Forest Service System units, shall be issued on the same terms and conditions and for the full term of the expired or waived permit. Upon completion of the scheduled NEPA analysis and decision for the allotment, the terms and conditions of existing grazing permits may be modified or reissued, if necessary to conform to such NEPA analysis." The permits are not expiring nor being waived prior to completion of these NEPA analyses. Upon completion of a NEPA analysis and decision, the Responsible Official has the authority and discretion to take whatever permit action is necessary to conform to the decision being implemented.

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 analyses identified significant issues which were addressed by the alternatives considered. Appellants' issues again call for consideration of alternative uses of the land (e.g. eliminate grazing and emphasize other uses). As discussed in the Preamble and in responses under the Scoping section of this document, land uses are Forest Plan decisions which have been previously made. Part of the purpose and need includes implementation of the Gila Forest Plan, which identifies grazing as an authorized land use.

40 CFR §1506.1(a)(1) and (2) limit the agency from taking any action which would limit the choice of alternatives. The records do not indicate any actions were taken prior to the decisions being made. The Responsible Official states in the decision notices that implementation will not take place sooner than 15 days following disposition of these appeals (records at 2).

40 CFR §1502.2 requires that agencies not commit resources which would prejudice selection of alternatives before making a final decision. Committing resources is equivalent to taking an action as described above.

Appellants suggest seven alternatives which could have been analyzed in addition to those considered. Two of the seven involve lower intensities of livestock grazing, meet the purpose and need for the actions and address some of the stated issues. These two alternatives therefore, are reasonable and would have been appropriate to consider had they been suggested during scoping. The place to suggest alternatives is during scoping when the interdisciplinary team has the opportunity to include them in the analysis, not after a decision has been made. Five of the seven alternatives are variations on the no action alternative. Any of these five could be proposed after choosing not to authorize livestock grazing on the allotment.

Finding: The no action alternatives were adequately considered in the analyses. The Responsible Official appropriately defined the scope of the analyses and analyzed a reasonable range of alternatives within that scope.

ECONOMICS

Contention: Appellants assert:

- Alternative A was not reasonable and is just a 10 year rest alternative because it included costs associated with maintaining improvements (issues 55(a), 56).
- There was no attempt to quantify the economic effects on other economic sectors if grazing were discontinued on all 28 allotments up for consideration on the Gila National Forest (issue 69(a)).
- Grazing administration costs are pertinent to an economic analysis and constitute an environmental effect (issue 70).
- The effects analysis is inadequate without consideration of taxpayer costs in violation of NEPA (issues 71, 72, 73(a)).
- The economic efficiency analysis shows that the selected alternative is not in the best interest of the American people. There is no justification or indication that other factors were considered, which leads to the conclusion that this project is not economically efficient (issue 73).
- The estimated ranch income displayed in the EA shows annual losses under the selected alternative. Either the analysis is inaccurate or the decision is not based on the analysis (issue 74).
- The cost benefit analysis failed to include substantial costs to the Forest Service and taxpayers including Payment in Lieu of Taxes (PILT) and the twenty-five percent fund in a succinct fashion that discloses actual monetary costs associated with each alternative (issue 93).

Response: Grazing administrative costs are of concern in an economic efficiency analysis, but are not considered an environmental effect. Economic effects on the human environment are more appropriately measured in terms of employment, income, and revenues for local government services. These effects are disclosed in the EA's and in the project records at 24 (Cow Creek EA pp. 22-27; Shingle Canyon EA pp. 15-19).

The Responsible Official did economic efficiency analyses using the best available information. Although appellants disagree with the results, there is no NEPA violation. Whether livestock grazing is authorized on these allotments or not will have no effect on the Forest Service budget nor the appellants' taxes.

Alternatives A (no grazing) include costs associated with maintaining improvements such as water developments and some fences. These alternatives also include the cost of removing unnecessary fences. The records indicate that water developments and some fences which have value for wildlife, would be maintained by the Forest Service in the absence of a permittee to maintain them (Cow Creek record at 24-14; Shingle Canyon record at 24-15).

One indicator of economic efficiency is present net value (PNV). Appellants accurately reflect PNV for the Forest Service and permittees individually. Appellants are correct that the permittees are receiving a benefit from a federal investment in the selected alternatives. Forest

Service policy does not mandate selection of the most economically efficient alternative as the appellants suggest.

The PNV of costs under Alternative A for each allotment is negative. The analyses include costs associated with maintenance of improvements and removal of fences associated with removing all livestock from the allotments.

As appellants point out, the EA's project losses in net ranch income. The EA's point out, however, that there are a variety of assumptions under which the economic model was run, and that the results provide an indicator of change among alternatives and are not represented as precise. The EA's also state that specific operating costs and revenues were not available and that average costs and revenues were generated using New Mexico State University Agricultural Experiment Station, Range Livestock Cost and Return Estimates for New Mexico Reports 1986-96 (Cow Creek EA p. 22; Shingle Canyon EA p. 15). Net ranch income figures were used in relative terms and not as specific projections.

Appellants find the EA's description of payments to counties in the form of PILT and the twenty-five percent fund lacking. They suggest that the discussion does not disclose the actual costs to the Forest Service and taxpayers. PILT will be made to counties whether livestock is authorized or not. The twenty-five percent fund payments come out of revenues collected by the Forest (Cow Creek EA p. 24; Shingle Canyon EA p. 17). These are not direct taxpayer costs related to the authorization of livestock on any given allotment. The analyses disclosed these payments in response to an issue concerning the loss of tax revenue to local governments (Cow Creek EA p. 11; Shingle Canyon EA p. 9).

Appellants cite discussion from the Kingston EA which speculates on increases in recreation related uses if grazing were to be discontinued on 28 Gila National Forest allotments currently undergoing environmental analysis. This scenario is not reasonably foreseeable, and as such, not pertinent to these analyses. Furthermore, the discussion is not in the Cow Creek or Shingle Canyon EA's. The discussion was pointing out that it would require many allotments to be closed before realizing a perceptible shift in local economic sectors. Service and tourism economic sectors would not change if these two allotments were not grazed.

Finding: The Responsible Official conducted economic efficiency analyses and disclosed the results in the EA's. The Responsible Official disclosed that the permittees will receive benefits from federal investment in the selected alternatives and that the Forest Service will sustain an economic loss on the allotments. Although appellants disagree, the selection of the most economically efficient or profitable alternative is not mandated by law, regulation, or policy.

SCOPING MEETINGS

Contention: Appellants assert:

- Mr. Manning was never notified of any scoping meetings on the allotments. Appellants quote from the EA's which state, "Additionally, the District held informal meetings with the permittees and interested individuals to discuss significant issues, ask questions, and solicit site specific comments" (issue 15).

Response: The EA's do include the statement as quoted. The records indicate that public comments were solicited only by letter (records at 18A). All scoping comments and EA comments were submitted in writing (record at 16B and 18B). A review of the records shows there were no scoping meetings held in conjunction with these analyses. The records provide no basis for the quoted statements in the EA's.

Finding: The EA's mis-state the public involvement effort conducted by the District. There were no scoping meetings from which appellants were excluded.

ENVIRONMENTAL ASSESSMENT

Contention: Appellants assert:

- The EA did not, to the fullest extent possible, include every report on pinyon-juniper encroachment and any adverse environmental effects which cannot be avoided, thus violating NEPA Sec. 102 (C)(ii), 40 CFR §1500.1(b), 40 CFR §1502.16(a) and (b), and 40 CFR §1502.24 (issue 45).

Response: An EA is a concise public document that serves to briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact. It includes brief discussions of the need for the proposal, alternatives, environmental impacts of the proposed action and alternatives, and a list of agencies and persons consulted (40 CFR §1508.9). The EA's provide these discussions in Chapters One through Four respectively.

The regulation at 40 CFR §1500.1(b) describes the purpose of NEPA procedures, which include; ensuring that environmental information is available to public officials and citizens before decisions are made, that the information be of high quality, and that documents concentrate on issues which are truly significant to the action. The project records, incorporated by reference in the EA's, document the information prepared in advance of the decisions. Appellants suggest holding the EA's to standards set in several citations of 40 CFR §1502, which specifically apply to EIS's.

Finding: The EA adequately discloses the environmental effects of the proposed action and alternatives. It meets the requirements and definition provided in regulation. Since regulation at 40 CFR implements the procedural provisions of NEPA, compliance with the regulations constitutes compliance with NEPA.

CUMULATIVE EFFECTS

Contention: Appellants assert:

- By analyzing individual allotments, the Forest Service has not adequately addressed cumulative effects to the watershed (issue 52).

Response: Direct, indirect, and cumulative watershed effects were analyzed at the 5th code watershed scale. The Cow Creek allotment was analyzed within the Upper Gila River 5th code watershed, which covers 376 square miles. The Shingle Canyon allotment was analyzed within

the Mimbres River 5th code watershed, which covers 331 square miles. The analyses considered activities contributing to cumulative watershed effects including; livestock grazing, deer and elk grazing, roads and trails, and fires. The cumulative watershed effects analyses reference professional articles on grazing effects on sediment and soil infiltration rates, and a USDA publication which addresses management practices in P-J ecosystems. The cumulative watershed effects analyses conclude that ground cover will be maintained or increased, under the selected alternatives (records at 21).

Finding: Cumulative watershed effects were analyzed at an appropriate scale.

PUBLIC RANGELANDS IMPROVEMENT ACT (PRIA)

Contention: Appellants assert:

- "The Forest Service needs to comply with Sections 2.(a)(1), (2), (3), (4), Sec. 2.(b)(2), Sec. 3.(d), and Sec. 4.(b) of PRIA". The appellants cite the Act as stating " '... that grazing uses should be discontinued (either temporarily or permanently) on certain lands, the goal of such management shall be to improve the range condition ...' " (issue 67).

Response: Section 2.(a)(1) through (a)(4), Section 2.(b)(2) of PRIA provide general statements of findings and a declaration of policy. The selected alternatives meet the appellants' cited goal of improving range condition therefore, removal of livestock wasn't necessary. The Responsible Official's decisions protect the land's productivity (see MUSYA response), fully consistent with these provisions of PRIA. Sec.3.(d) simply defines the term "range condition" and provides no direction for management. Sec.4.(b) applies to the Secretary of Interior and not the Secretary of Agriculture. The USDA Forest Service is under the direction of the Secretary of Agriculture.

Finding: The Responsible Official's analyses and decisions are in compliance with PRIA.

FOREST PLAN AND NFMA

Contention: Appellants assert:

- "...the FS has failed to do analysis to see if grazing is 'consistent with other multiple use goals and objectives" (issue 2).
- The Forest Service failed to inform the public that land use plans can be readily changed or amended (issue 75).
- Continued commitment to livestock grazing as the primary land use is causing continued undesirable environmental consequences, is forbidden by NEPA, and must be updated (issues 76, 77, 78, 79, 80, 81, 82, 83).
- Grazing suitability must be determined not only when developing Forest Plans, but also at the project planning level. This includes the economic and environmental consequences of alternative uses forgone (issues 52(a), 84, 85, 86, 87, 88, 89, 90, 91, 92).

Response: Forest Plans guide all natural resource management activities and establish management standards and guidelines for the National Forest System. They determine resource management practices, levels of resource production and management, and the availability and suitability of lands for resource management (36 CFR § 219.1(b)). The proposals to authorize livestock implement the Forest Plan as stated in the purpose and need. While the Forest Supervisor has the authority to propose a Forest Plan amendment at any time, an amendment was not proposed in this case. Proposals such as livestock grazing authorizations, implement the Forest Plan, they do not maintain it.

Maintenance of the Forest Plan through amendment and revision is a programmatic planning process which takes place above that of individual project planning. A Forest Plan shall ordinarily be revised on a 10 year cycle or at least every 15 years. It also may be revised whenever the Forest Supervisor determines that conditions or demands in the area covered by the plan have changed significantly. The Forest Supervisor shall review the conditions on the land covered by the plan at least every 5 years to determine whether conditions or demands of the public have change significantly (36 CFR § 219.10(f)). Contentions concerning the adequacy of the Forest Plan are outside the scope of these site specific analyses and decisions.

These site specific analyses disclose the effects of the proposals and alternatives. The analyses and decisions do not indicate that livestock is the primary land use. The Forest Plan prescribes management emphasis on wildlife habitat, natural conditions in the wilderness, visual quality, fuel wood, and livestock grazing. The Forest Plan does not place any land use above another.

Planning regulations 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)). These regulations direct that, in forest planning, the suitability of National Forest System lands for producing forage for grazing animals be determined. Lands so identified shall be managed in accordance with direction established in Forest Plans (36 CFR § 219.20). The Forest Plan identifies these management areas as suitable for livestock grazing and includes standards and guidelines under which grazing may be authorized (records at 7). An analysis of alternative uses and economic and environmental consequences of alternative uses forgone was conducted in the Forest Plan EIS. A project level analysis should not re-analyze suitability determinations made in the development of the Forest Plan. PNV's for each mix of land uses considered are disclosed in the Forest Plan EIS as well. As discussed previously under the Project Scope section, these issues were covered by prior environmental review (40 CFR §1501.7(a)(3)).

Forest Plan amendments and revisions provide the appropriate forum for suitability issues. The Gila National Forest Plan is scheduled to begin revision in the year 2000. Grazing suitability will be addressed in that process.

Finding: Issues concerning the adequacy of the Forest Plan are outside the scope of these site specific analyses. Suitability and related analyses are appropriate at the Forest Plan level and not through project level activities.

RIPARIAN

Contention: Appellants assert:

- There is a need to evaluate and improve all the riparian areas in the allotment (issues 94, 95, 99, 100, 101).
- Some springs have perennial streams "of short duration" associated with them and deserve to be improved (issues 96, 97, 98).
- Management must give preferential treatment to resources dependent on riparian areas over other resources (issues 102, 103).

Response: Riparian areas within the Cow Creek allotment are identified as fully functioning (Cow Creek EA p. 1). There are no riparian areas on the Shingle Canyon allotment (Shingle Canyon EA p. 2). No riparian issues surfaced during project planning.

Perennial means lasting throughout the year. Appellants' "short duration" streams are not perennial since they only occur for a limited time during the year. No information was raised during planning, that identified that the springs in the allotments were in unsatisfactory condition. The decision notices state that undeveloped springs will not change in condition (records at 02).

Finding: The Responsible Official appropriately identified and addressed riparian conditions raised in the analyses.

THREATENED, ENDANGERED, AND SENSITIVE SPECIES

Contention: Appellants assert:

- Riparian areas must be included and analyzed in T&E surveys and in the EA. Riparian areas must have improvement assured by plans (issue 104).
- A diverse ecosystem and prevention of woody encroachment is necessary to ensure habitat for threatened, endangered, and sensitive species (issue 105).

Response: The district biologist completed biological assessments and evaluations using the "Guidance Criteria for Determining the Effects of Issuing Term Grazing Permits on Threatened, Endangered, or Species Proposed for Listing" (records at 8). The assessments found no adverse effects on federally listed threatened and endangered species. The assessments also found that the selected alternatives would not cause Forest Service sensitive species to trend toward listing (records at 23). The Fish and Wildlife Service concurred with these findings based upon the "Guidance Criteria for Determining the Effects of Issuing Term Grazing Permits on Threatened, Endangered, or Species Proposed for Listing" (records at 8).

Finding: The analyses include effects on threatened, endangered, and sensitive species. The Fish and Wildlife Service concurred that there would be no adverse effects to threatened and endangered species, based on use of the guidance criteria. Sensitive species would not trend

toward listing. The records indicate that threatened, endangered, and sensitive species will be protected.

WILDERNESS

Contention: Appellants assert:

- Mineral supplements and salt blocks cannot be placed in new locations in the wilderness because it violates Sec. 4(d)(4)(2) of the Wilderness Act and will deteriorate natural ecosystems and wilderness values (issues 106, 107, 108, 112).
- Vegetation types are diverging from their natural successional state in violation of 36 CFR §293.2(a) (issue 65).

Response: A portion of the Cow Creek allotment is within the Gila Wilderness. None of the Shingle Canyon allotment is within wilderness. Livestock grazing on the Cow Creek allotment dates back to 1936 (Cow Creek EA p. 3). 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..." Redistribution of livestock use within the Cow Creek allotment does not constitute any new authorization. This practice is consistent with the Wilderness Act. Salting and herding are tools to disperse the animals, thus reducing concentrated livestock use. The management strategy is expected to maintain the physiological growth requirements of forage plants and improve vegetation in key areas (records at 22).

The records do not indicate any deviations from natural ecological succession within wilderness. There is no violation of 36 CFR §293.2(a).

Finding: The selected alternative on the Cow Creek allotment is consistent with the Wilderness Act and will maintain the physiological growth requirements of forage plants. These issues do not apply to the Shingle Canyon allotment since it is not in wilderness.

SIGNIFICANCE OF EFFECTS

Contention: Appellants assert:

- The Forest Service failed to take a hard look at environmental consequences and arbitrarily found no significant impacts. The effects analysis should have included pinyon-juniper resource concerns, fire frequency, deteriorating and decreasing rangeland, and animal habitat, and the range of alternatives should have included a variety of multiple uses (issues 30, 31, 34, 35).
- Effects were not considered in the proper context and national issues should have been addressed (issue 32).
- A number of significance considerations were ignored; severity of impact, controversy, unique characteristics, critical habitat, uncertainty, and cumulative impacts (issue 33).

- FONSI point number 2 is not justified as many riparian areas were not considered on the allotment (issue 109.2).
- FONSI point number 3 is not justified as there is controversy over desired land use, woody encroachment, and subsidy to the permittee (issue 109.3).
- FONSI point 4 is not justified as the decision aggravates pinyon-juniper encroachment and this involves uncertainty and unique and unknown risks (issue 109.4).
- FONSI point 5 is not justified as this decision represents a decision in principle about future considerations (issue 109.5).
- FONSI point 6 is not justified as woody encroachment is having a cumulative effect (issue 109.6).
- FONSI point 7 is not justified as there would be adverse effects on heritage resources such as natural ecosystems, wildlife habitat, and watershed resources (issue 109.7).
- FONSI point 8 is not justified as impacts to threatened and endangered species have not been adequately addressed (issue 109.8).
- FONSI point 9 is not justified as the decision violates numerous laws as cited throughout the appeal (issue 109.9).
- FONSI point 10 is not justified as discrimination against segments of society are rampant (issue 109.10).
- The FONSI is not justified (issue 110).

Response: The analyses include discussions concerning the appellants' stated resource concerns. The EA's disclose effects relative to fire frequency (Cow Creek EA p. 31; Shingle Canyon EA pp. 21-22), wildlife and wildlife habitat, including threatened and endangered species (Cow Creek EA pp. 17-20; Shingle Canyon EA pp. 12-14), and rangeland vegetation condition (Cow Creek EA pp. 15-17; Shingle Canyon EA pp. 11-12). Appellants suggest that since woody encroachment was discussed in the Jordan Mesa EA, that it is "undoubtedly similarly bleak" on these allotments. The Shingle Canyon EA indicates that woody encroachment is not a problem on this allotment (Shingle Canyon EA p. 11). The Cow Creek record indicates that woody encroachment was not identified as an issue in the analysis. Appellants want to broaden the scope of the analysis to include alternative uses (see response to scoping issues). Alternative land uses were considered and decided at the Forest Plan level.

The effects of the proposed actions and alternatives were appropriately analyzed at the local and regional levels. The environmental effects of these actions are localized in nature (EA's Chap. III). Social and economic effects were analyzed at both the local community level and at a three county area level.

FONSI point 2 - Wet areas around ephemeral springs and seeps are not considered park lands, prime farm lands, or ecologically critical areas.

FONSI point 3 - This conclusion concerns controversy over effects on the human environment not, alternative land uses outside the scope of the analyses or any benefits the permittees might

receive from federal investments. Controversy must be supported by science and not conjecture. P-J encroachment, which is an effect, was discussed in both EA's. The Cow Creek record does not indicate that the proposed action would contribute to woody encroachment. In other words, it was not identified as an issue. The Shingle Canyon EA states that woody encroachment is not a problem.

FONSI point 4 - The analyses are for the issuance of term grazing permits. These types of actions have been considered numerous times, for over 50 years across the southwest. The effects are generally known. The records do not indicate any areas of uncertainty.

FONSI point 5 - The decisions authorize livestock on the allotments for a ten year period. Any subsequent authorizations on these allotments or on any other allotments will have to undergo analysis pursuant to NEPA and implementing regulations. These actions do not represent decisions in principal about future considerations.

FONSI point 6 - P-J encroachment, which is an effect, was discussed in the EA's. The Cow Creek record does not indicate that the proposed action would contribute to woody encroachment. In other words, it was not identified as an issue. The Shingle Canyon EA states that woody encroachment is not a problem. The selected actions will not have cumulatively significant impacts on the human environment.

FONSI point 7 - Natural ecosystems, wildlife habitat, and watershed resources are not the type of resources addressed in these particular findings. These findings relate to historic and prehistoric remains of human origin.

FONSI point 8 - Impacts to threatened and endangered species have been adequately addressed (records at 23). The U.S. Fish and Wildlife Service concurred with the findings in the analyses, based on the guidance criteria (records at 8). Refer to response to Threatened, Endangered, and Sensitive Species.

FONSI point 9 - The decisions are consistent with the numerous laws cited by the appellants. (Reference all the responses to legal issues raised in these appeals.)

FONSI point 10 - The records do not reflect any impacts from the selected alternatives which would fall disproportionately on any protected group, and there is no evidence that anyone's civil rights have been violated.

Finding: The effects analyses and disclosures are sufficient for the Responsible Official to make informed decisions and findings of no significant impact. The Responsible Official appropriately found that the impacts of the selected alternatives were not significant, and appropriately chose not to document the analyses in environmental impact statements.

MONITORING AND MITIGATION

Contention: Appellants assert:

- The monitoring and mitigation is premature, and that the Forest has demonstrated negligence in fulfilling promises of monitoring (issues 111, 113, 114).

Response: The decisions are predicated on monitoring implementation of the grazing systems to ensure utilization standards are met. These are examples of adaptive management in which stocking levels are established based on the best available information, backed up by field monitoring to ensure stocking is appropriate and objectives are being met. If monitoring indicates that the allotments are overstocked, the Responsible Official will make further adjustments in stocking levels.

The Responsible Official has indicated in the decisions that mitigation will be applied and monitoring will be done to ensure that the objectives are met. The appellants are correct in asserting that the mitigation and monitoring must be done in order to assess the effectiveness of the decisions, and to make any necessary adjustments. There is nothing in the records which indicates that the planned monitoring and mitigation will not be conducted.

Finding: The Responsible Official is committed to monitoring and mitigation measures to ensure objectives of the decisions are met.

WOODY ENCROACHMENT

Contention: Appellants assert:

- The prescribed utilization rate will exacerbate woody encroachment and impact arid southwest ecosystems (issues 1(b), Shingle Canyon 1(d)).
- There is no discussion on woody encroachment (issue 1(c)).

Response: 'Woody encroachment' is a natural succession of plants where woody species are able to out compete non-woody species. If a given species is better adapted to certain conditions of soil, moisture, temperature, and sunlight it will replace those species less adapted to those conditions. Some herbaceous plant communities are prevented from successional advancement by natural forces such as fire. When fires are suppressed or grazing reduces ground fuel to the point where fire will no longer spread, successional advancement may occur. Climatic change, such as drought cycles may also play a part in plant species composition. As moisture becomes scarce, plants with deeper root systems and lower moisture transpiration rates will have an edge over plants without these characteristics.

In determining allowable use, the physiological needs of forage plant species for growth and reproduction must be considered. With these needs met, forage plant communities can better compete with woody species. There is a point however, where woody species adapted to the soil and climate can successfully compete for moisture and sunlight to the disadvantage of herbaceous plants. If this were not the case, there would be no forests.

The EA's discuss the role of fire in maintaining openings in the forest and woodland areas and each alternative's effect on fuels to carry fire (Cow Creek EA p. 31; Shingle Canyon EA p. 22).

The Cow Creek allotment has been managed for 75 head yearlong since 1960. The selected grazing management system has been in place for several years and provides for the physiological needs of forage plants (Cow Creek EA p. 16). A majority of the allotment has burned in the past ten years and site visits reveal an upward trend in range condition where fire has reduced the woody vegetation canopy (Cow Creek EA p. 2). The history of fire on the Cow

Creek allotment indicates that there has been sufficient fuel to carry fire. The Cow Creek EA indicates that if fire continues to maintain areas in subclimax condition, range condition will continue to improve.

The Shingle Canyon allotment has been managed as a swing allotment since 1994. Prior to that time it was stocked at 80 head for three to four months each year (Shingle Canyon EA p. 2). The EA indicates that pinyon-juniper stands are fairly open with an herbaceous understory, and that woody encroachment has not been much of a problem (Shingle Canyon EA p. 11). The Shingle Canyon EA indicates that woody vegetation would increase very slowly, whether livestock were grazed or not (Shingle Canyon EA pp. 11-12).

Finding: The EA's adequately disclose effects on woody encroachment and indicate that the selected actions will not exacerbate woody encroachment.

SWING ALLOTMENT

Contention: Appellants assert:

- The use of a swing allotment rewards ranchers who overgraze their allotments. Swing allotments should be analyzed together with the allotments they might support (Shingle Canyon issue 1(e)).

Response: Appellants are correct in asserting that where livestock numbers exceed capacity, they should be adjusted. Swing allotments provide a reserve forage base to be used where natural events such as drought, fire or insects impact forage production on other allotments. Swing allotments may be used to promote achievement of Forest Plan goals and objectives, i.e. resting another allotment for management needs such as improving soil, water, and vegetative conditions or accumulating fine fuels for prescribed fire.

It would be speculative to suggest which allotments might need the use of a swing allotment. The allotment would be used as needed, and on a temporary basis, by permitted livestock to mitigate resource problems on other allotments. The Shingle Canyon EA discloses the effects of utilizing forage on the Shingle Canyon allotment should the need arise.

Finding: The use of the Shingle Canyon allotment as a swing pasture is an appropriate management strategy. The use of this allotment in this fashion does not promote over utilization on other allotments.

COW CREEK SUITABLE RANGE

Contention: Appellants assert:

- There is much less suitable acreage for livestock than indicated in the EA (Cow Creek issue 1(d)).

The EA indicates on page two, that a 1960 range analysis shows that there were 12,147 acres of primary and secondary range on the allotment. Appellants point out that approximately 34% of

the allotment is over 40% slope, and that these slopes are not suitable for livestock grazing. Appellants suggest that there is much less suitable acreage for livestock than indicated.

Appellants are correct in their assertion that the EA figures suggest more capable acres than may be present. The Cow Creek allotment has been managed for 75 head yearlong since 1960. The selected grazing management system has been in place for several years and provides for the physiological needs of forage plants (Cow Creek EA p. 16). There is almost 40 years of experience with the selected stocking level and several years of experience with the selected management strategy. A majority of the allotment has burned in the past ten years and site visits reveal an upward trend in range condition where fire has reduced the woody vegetation canopy (Cow Creek EA p. 2). The vegetation effects analysis concludes that if fire continues to maintain areas in subclimax condition, range condition will continue to improve.

Finding: The range acreage figures in the EA do not appear to be accurate. The effects analysis is based upon experience with the selected stocking level and management strategy. The acreage figures are not a factor in the effects analysis.