



United States
Department of
Agriculture

Forest
Service

Southwestern
Region

517 Gold Avenue, SW
Albuquerque, NM 87102-0084
FAX (505) 842-3800
V/TTY (505) 842-3292

File Code: 1570-1

Date: July 13, 1999

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

Certified Mail-Return Receipt Requested
Z 506 822 231

Re: Appeal #99-03-00-0049-A215, Dry Canyon Allotment, Sacramento Ranger District, Lincoln National Forest; Appeal #99-03-00-0050-A215, Jordan Mesa, Canyon Creek, and XSX Allotments, Wilderness Ranger District, Gila National Forest

Dear Mr. Horning:

This is my review decision concerning the appeals you filed on behalf of Forest Guardians, regarding District Ranger Max Goodwin's and Acting District Ranger Annette Chavez' Decision Notices and Findings Of No Significant Impact which authorize grazing and implements grazing management strategies on the Dry Canyon Allotment, Lincoln National Forest and the Jordan Mesa, Canyon Creek, and XSX Allotments, Gila National Forest, respectively.

Pursuant to 36 CFR 215.18(a) and (b), I have decided to consolidate these appeals into one appeal decision, considering the similarity of the issues raised and the broad scope of the appeals.

BACKGROUND

District Ranger Goodwin issued a decision on April 14, 1999, for the above named allotment. Ranger Goodwin selected Alternative B, which authorizes up to 105 head of cattle (cow/calf) from November 1 to May 15.

Acting District Ranger Chavez issued a decision on April 14, 1999, for the above named allotments. Acting District Ranger Chavez' decision resulted in the selection of the following alternatives and authorizations: (1) Jordan Mesa Allotment, Alternative C, which authorizes 200 head of cattle (cow/calf) and 10 horses, yearlong; (2) Canyon Creek Allotment, Alternative C, which authorizes 20 head of cattle (cow/calf) and 4 horses, yearlong; (3) XSX Allotment, Alternative B, which authorizes a maximum of 324 AMs of use and allows grazing on only half of the allotment once out of every three years (2 years consecutive rest).

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, several attempts were made by Ranger Goodwin to informally resolve your appeal. On June 14, 1999, Mr. Brian Bird of your staff was contacted and confirmed that you would not be available to meet in an attempt to seek informal resolution of the appeal, therefore, informal resolution of the appeal was not reached. Acting Ranger Chavez and Russell Ward (District Staff Officer) attempted to contact you on two separate occasions, June 9 and June 11, 1999. You could not be reached by telephone, therefore, informal disposition of this appeal was not achieved.

My review of these appeals has been conducted pursuant to, and in accordance with 36 CFR 215.17. I have thoroughly reviewed the appeal records, including the recommendations of the Appeal Reviewing Officer. My review decision, hereby, incorporates the appeal records.

APPEAL DECISION

After a detailed review of the records and the Appeal Reviewing Officer's recommendations, I affirm the Responsible Officials' decisions concerning the Dry Canyon, Jordan Mesa, Canyon Creek, and XSX Allotments which authorize grazing and implement management actions. 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, Lincoln NF
District Ranger, Sacramento RD
Forest Supervisor, Gila NF
District Ranger, Wilderness RD
Director of Rangeland Management, R3
Appeals and Litigation Staff, R3

REVIEW AND FINDINGS

of the

Forest Guardians' Appeals #99-03-00-0049-A215 and #99-03-00-0050-A215

regarding

Dry Canyon, Jordan Mesa, Canyon Creek and XSX Allotment Decisions

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 Officials failed to evaluate the allotments' 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 assessments (EAs) to address the economic and environmental consequences and the alternative uses foregone. Absent these suitability analyses, 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 decisions are 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 (sic) 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 Lincoln (Doc. 29, Appendix C) and Gila (Doc. 07-02) National Forest Plans have identified the allotments in these appeals as suitable for livestock grazing.

The forest planning processes undertook quantitative analyses fully incorporating economics into the processes. The forest plans fully comply 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 plans. The 36 CFR 219 regulations are not applicable in this case, therefore, the decisions are not premature.

ISSUE 2: Inadequate range project effectiveness analysis.

Contention: Appellant asserts that the analysis did not meet the requirements of Forest Service Handbook 2209.11 "Range Project Effectiveness Handbook" for economic analysis. This issue applies only to the Dry Canyon allotment appeal.

Response: Forest Service Handbook 2209.11 "Range Project Effectiveness Handbook" was removed from the Forest Service directives system on April 1, 1998. However, the economic impact of each alternative was analyzed and considered for the Dry Canyon Allotment (Doc. 29).

Finding: With the removal of FSH 2209.11 from the Forest Service directives system, the appellant's issue is moot. The record reflects that an economic analysis was conducted and the results were considered in the decision making process.

ISSUE 3: The EA violates the Clean Water Act.

Contention: The appellant alleges that the Forest Service failed to require the permittees 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 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 Dry Canyon allotment planning effort (Lincoln National Forest) did not consider water quality as an issue since no water quality limited streams exist within or downstream from the allotment.

Project records reveal that the appropriate procedures for contacting and consulting with the New Mexico Health and Environment Department, as outlined in our Interdepartmental Agreement, were followed (Gila NF, Doc. 11; Lincoln NF Docs. 2 and 9). The project records contain evidence of the incorporation of water quality mitigation measures (Best Management Practices or BMP's) throughout the planning and decision-making processes (Gila NF, Docs. 02 and 04-04; Lincoln NF, Doc. 29, Appendix D). The Gila NF selected alternatives respond 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). The alternative selected for the Dry Canyon Allotment (Lincoln NF), with the associated BMPs, is appropriate for the non-perennial streams in the allotment (Doc. 50).

Finding: Appropriate procedures were followed and adequate mitigation is planned for the Dry Canyon, Jordan Mesa, Canyon Creek and XSX Allotment decisions. There is no violation of the Clean Water Act.

ISSUE 4: The Decisions violate the Multiple Use and Sustained Yield Act.

Contention: The appellant alleges that the decisions violate the Multiple Use and Sustained Yield Act by failing to manage for the highest public benefit. The appellant further alleges that the decisions to authorize livestock grazing will permanently impair land productivity.

Response: Decisions concerning highest and best use were made during development of the Forest Plans. Management of forest lands for highest net public benefits was analyzed and decided upon in the preparation of the forest plans. The forest plans provide 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 project level analyses.

The EAs depict that site productivity will be maintained in some areas and likely improve in most other areas (Gila NF, Docs. 02-01, 04-04; Lincoln NF Doc. 29). Generally, upland and riparian watershed conditions are expected to improve due to decreased grazing use (permitted numbers, use levels) and management changes (exclusion, deferment, or rest). The amount and diversity of riparian vegetation is expected to improve also within the Gila NF allotments. There are no riparian areas within the Dry Canyon Allotment (Lincoln NF), therefore, riparian was not identified as an issue to be addressed in the EA.

Finding: Decisions concerning highest public benefit are outside the scope of the analysis under review. The Responsible Officials' decisions will not impair land productivity.

ISSUE 5: 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 records indicate that the selected alternatives will remedy the resource concerns on the allotments (Gila NF, Doc. 04-04; Lincoln NF, Doc. 29). The EAs display the effects of implementing the proposed actions and alternatives. The Responsible Officials' decision rationale reflect consideration of the effects as disclosed in the EAs and DN/FONSI (Gila NF, Doc. 02-01; Lincoln NF, Doc. 50).

Finding: The Responsible Officials made reasoned and informed decisions based on the analyses and have not violated the Administrative Procedures Act.

ISSUE 6: The decisions violated the National Forest Management Act by failing to maintain viable numbers of all species and protect riparian areas. This issue only applies to the Jordan Mesa, Canyon Creek, and XSX appeal.

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.

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. These site-specific projects are designed under the direction provided in the forest plan. The Responsible Official found the selected alternatives to be consistent with the forest plan (records at 2, p. 4).

Riparian condition assessments identified unsatisfactory riparian conditions on the East Fork of the Gila River and along Canyon Creek. Correction of unsatisfactory conditions became resource objectives for the Jordan Mesa, XSX, and Canyon Creek proposals (EAs' p. 5).

Riparian dependent resources along the East Fork and Canyon Creek are being given preference over livestock use. No other riparian issues surfaced during project planning. Since the Middle Fork of the Gila is already in satisfactory condition and there are no other perennial streams on the allotments (EA's p. 16), planning appropriately focused on the East Fork of the Gila River and Canyon Creek.

The effects of the alternatives on wildlife species were analyzed and protective measures for riparian areas were proposed for implementation, such as, no grazing of the East Fork of the Gila River (Docs. 23-02, 23-03, 23-04).

Finding: The decisions provide 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 alternatives, that the projected habitat conditions would maintain viability of all wildlife species.

ISSUE 7: The Forest Service violated the National Environmental Policy Act by failing to analyze a reasonable range of alternatives. This issue only applies to the Jordan Mesa, Canyon Creek, and XSX appeal.

Contention: The appellant contends that a reasonable range of alternatives, as required by NEPA implementing regulations and Forest Service directives, were 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). For the Jordan Mesa and Canyon Creek analyses, Alternative B represents current management and Alternative C represents the proposal to reduce the existing permits, and Alternative A represents the required no-action alternative. For the XSX analysis, Alternative B represents current management and the proposed action. Alternative A represents the no-action alternative. A third alternative was considered but was dropped from detailed study. That alternative considered setting grazing use at historical levels.

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 either the no grazing alternative or the current management alternative.

Finding: The Responsible Official appropriately defined the scope of each analysis and analyzed a reasonable range of alternatives within that scope.

ISSUE 8: The Forest Service violated the National Environmental Policy Act in failing to consider and disclose adequately the cumulative impacts of the proposed action. This issue only applies to the Jordan Mesa, Canyon Creek, and XSX appeal.

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 the National Environmental Policy Act.

Response: The cumulative effects analyses contained in the project records are summarized in the EAs (Docs. 04-04). The direct, indirect, and cumulative watershed effects were analyzed at the Middle Fork of the Gila River 5th code watershed scale. This watershed covers 353 square miles and includes nine allotments: XSX, Jordan Mesa, Canyon Creek, Indian Creek, Black

Mountain, O-Bar-O, T-Bar, Y Canyon, and Copper Creek. One fourth of the watershed, in the Gila Wilderness, is not associated with an allotment. The analyses identified activities contributing to cumulative watershed effects, which includes, livestock grazing, deer and elk grazing, roads and trails, recreational uses (hiking and hunting), and fire.

The cumulative watershed effects analyses includes 20 references, consisting of professional articles on grazing effects on sediment and soil infiltration rates and two USDA publications addressing site productivity and management practices in P-J ecosystems. The cumulative watershed effects analyses conclude that an increase in vegetative ground cover, reduced soil compaction, improved infiltration, and less runoff can be expected from the selected alternatives (Doc. 21-03). Cumulative effects analyses for other resources were also completed and contained in the project record (Docs. 23-02, 23-03, 23-04, 23-05, 23-06, 24-09, 24-13, and 27-01). These cumulative effects analyses clearly considered and analyzed the impacts of past, present, and reasonably foreseeable activities on the allotments.

Finding: The project records contain documentation that adequately addresses the cumulative impacts of the alternatives considered. The Responsible Official considered the cumulative impacts in the decision making process.

ISSUE 9: The Forest Service decisions violate the Wilderness Act. This issue only applies to the Jordan Mesa, Canyon Creek, and XSX appeal.

Contention: Appellants contends that allowing grazing of allotments within 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 Jordan Mesa Allotment in 1933 (Jordan Mesa EA p. 2). The XSX Allotment dates back to 1911 (XSX EA p. 3). Cattle were authorized on the Canyon Creek Allotment in 1935. 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 the allotments within the wilderness areas is consistent with the Act and a legitimate activity within the wilderness areas as cited above.

Finding: The selected alternatives are consistent with the Wilderness Act.