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Forest
Service

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File Code: 1570-1

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Forest Guardians
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RE: Appeal #99-03-00-0038-A215, Kingston Allotment, Gila National Forest

Dear Mr. Horning:

This is my review decision of the appeal filed regarding District Ranger James E. Paxton, Jr.'s (Black Range Ranger District) Decision Notice and Finding Of No Significant Impact (DN/FONSI) which authorizes grazing and implements grazing management strategies on the Kingston allotment, Gila National Forest.

BACKGROUND

District Ranger Paxton issued a decision on February 23, 1999, in which Alternative E was selected for implementation. The decision would result in a term grazing permit issued for 300 head of cattle yearlong, with a non-use provision for 100 head for the first three years of the permit which would limit actual stocking to 200 head or less. The non-use provision allows time for production utilization studies to be completed for the purpose of validating the preliminary estimated capacity. The District Ranger, in this review, is identified as the Responsible Official (RO) whose decision is subject to administrative review under 36 CFR 215 appeal regulations.

As directed in 36 CFR 215.16, the RO or his staff, contacted the appellant on April 21, 1999, in an attempt to seek informal resolution of the appeal. The record reflects that the appellant did not want to seek informal resolution of the appeal. It was agreed between the RO and the appellant to allow the appeal to proceed through the formal disposition process.

APPEAL ISSUES AND FINDINGS

Appellant contends that: 1) the Forest Service violated the National Forest Management Act (NFMA) and the National Environmental Policy Act (NEPA) by continuing to graze cattle without evaluating grazing suitability and a decision is therefore premature; 2) the analysis does not meet the requirements of Forest Service Handbook 2209.11 "Range Project Effectiveness Handbook" for economic analysis; 3) the environmental assessment (EA) violates the Clean Water Act (CWA) by failing to require permittee certification from the State Department of Environmental Quality; 4) the decision violates the Multiple Use and Sustained Yield Act



(MUSYA) by failing to manage for the highest and best use, and without impairing land productivity; and 5) the EA violates the Administrative Procedures Act (APA).

The appellant's issues are addressed as follows:

ISSUE 1: The Forest Service violated NFMA and NEPA.

Contention: Appellant contends that NFMA and NEPA were violated because the RO failed to evaluate the allotment's suitability for grazing. As the appellant stated on page 2 of the appeal, "...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 EA to address the economic and environmental consequences and the alternative uses foregone. Absent this suitability analysis, the appellant states that the Forest Service failed to discharge its obligation under NEPA to take a hard look at each alternative, and therefore the decision is premature.

Response: Contrary to the appellant's assertions, NFMA does not require that a suitability analysis be conducted at the project level. The Forest Service operates within a two-tiered planning and decision making process. The first level is the programmatic forest plan level and the second is the site-specific project level, such as a grazing allotment. The appellant does not make the distinction between forest planning and project planning. The appellant states that there are regulatory requirements that the agency must fulfill in regard to completing a suitability analysis, in which the appellant cites 36 CFR 319.20 as the regulation. There is no regulatory requirement that compels the Forest Service to conduct a suitability analysis and determination at an allotment or project planning level.

The purpose of the NFMA regulations (36 CFR 219) is to "... set forth a process for developing, adopting, and revising land and resource management plans for the National Forest System...". Appellant references the NFMA regulations' suitability requirement which applies to forest plan level decisions, not project level decisions. The forest plan is the proper and only level at which suitability, per the requirements of 36 CFR 219.20, is made.

The forest planning process inherently undertook a quantitative analysis fully incorporating economics into the process. 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 in completion of the forest plans. The 36 CFR 219 regulations are not applicable in this case, therefore, the decision is not premature. The RO is affirmed with respect to this issue.

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.

Response: Forest Service Handbook 2209.11 "Range Project Effectiveness Handbook" was removed from the Forest Service directives system on April 1, 1998.

Finding: With the removal of FSH 2209.11 from Forest Service directives, the appellant's issue is moot. The RO is affirmed on this issue.

ISSUE 3: The EA violates the Clean Water Act.

Contention: The appellant contends that the Forest Service failed to obtain water quality certification from the state of Arizona for the Kingston Allotment as required under Section 401 of the CWA. Appellant also alleges that implementation of the decision will degrade water quality limited streams, in violation of State water quality standards.

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

Early in the process, the Forest considered stream non-attainment status as a significant issue for this allotment's planning effort (Doc. 04-08, p.I-11). Project records reveal that the appropriate procedures for contacting and consulting with the New Mexico Environment Department, as outlined in our Interdepartmental Agreement, were followed (Doc. 11-02, 11-06, 11-15). The project record contains evidence of the incorporation of water quality mitigating measures (Best Management Practices or BMP's) throughout the planning and decision process (Doc. 21-07; Doc. 04-08, p.II-20). The alternative selected responds to the water quality issue through management changes that will have a positive affect on improving ground cover, reducing erosion, and protecting riparian areas (Doc. 02-01).

Finding: Appropriate procedures were followed and adequate mitigation is planned for this allotment management plan decision and there is no violation of the CWA. The RO is affirmed in regard to this issue.

ISSUE 4: The Decision violates the Multiple Use and Sustained Yield Act.

Contention: The appellant alleges that the decision violates the MUSYA by failing to manage for the highest public benefit. Appellant further alleges that the decision to authorize livestock grazing will permanently impair land productivity.

Response: The decision concerning highest and best use was made during development of the Forest Plan for the Gila National Forest.

The EA describes the scope of the analysis in the "purpose and need" as well as, the "decision to be made" sections of the EA (Doc. 04-08). The scope of this analysis is related to analyzing the effects of livestock grazing only within the Kingston allotment. Wild ungulate forage needs, as well as, non-ungulate species, were considered and provided for in the alternative selected. Alternative E contains allowable use standards that are set at conservative levels to provide surplus forage, cover, and other resource needs for wildlife, plant health, and watershed improvement and stability. The effects analysis in the EA stated that livestock use of browse may improve the availability and nutritional value of the vegetation for grazing wildlife (deer).

Elk use was recognized as being low on the allotment therefore, utilization standards were not expected to be exceeded with the combined livestock and wild ungulate use. Monitoring is also recognized as a key component to meeting Forest Plan standards and guides. The EA states that the action selected is in conformance with the Forest Plan therefore, by implementing the preferred alternative it would also be consistent with MUSYA.

The EA (Doc. 04-08) and DN/FONSI (Doc. 02-01) depicts that site productivity will be maintained, if not improved. The EA presented a clear rationale, based on the effects analysis, that the preferred alternative would improve resource conditions within the areas affected by livestock grazing without impairing land productivity.

Finding: The EA and DN/FONSI provide adequate information that allowed the RO to determine the benefits of the alternatives in order to meet the intent of MUSYA and site productivity. The RO is affirmed in regard to this issue.

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 record indicates that the selected alternative will remedy the resource concerns on the allotments. The EA (Doc. 04-08) displayed, and considered, a reasonable range of alternatives. The Forest Service policy requires that at a minimum, the agency consider the No Action (no grazing), No Change (current management), and a proposed action. The EA documents that two additional alternatives were considered in detail as well as, one alternative considered and dropped from detailed analysis.

The EA, along with the record, document the effects of the alternatives considered.

Finding: The RO conducted an adequate analysis and rendered a rational decision based on that analysis. The RO did not violate the APA. The RO is affirmed in regard to this issue.

APPEAL REVIEWING OFFICER'S RECOMMENDATION

The Appeal Reviewing Officer (ARO) has recommended that the Responsible Official's decision be affirmed and that your request for relief be denied. The evaluation concluded that: (a) the 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 appellant were adequately addressed in the project record.

APPEAL DECISION

After a detailed review of the records and the ARO recommendations, I affirm the RO's decision concerning the Kingston Allotment, Gila National Forest, grazing authorization and management action.

My decision constitutes the final administrative determination of the Department of Agriculture [36 CFR 215.18(c)].

Sincerely,

/s/ Louis Volk Jr. for
JOHN R. KIRKPATRICK
Appeal Deciding Officer
Deputy Regional Forester, Resources

Enclosure

cc:
Forest Supervisor, Gila NF
District Ranger, Black Range RD
Director of Rangeland Management, R3
Director of EAP, R3
Appeals and Litigation Staff, R3