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Date: May 25, 1999

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Re: Appeal (#99-03-00-0039-A215) of the Decision Notice and Finding of No Significant Impact on the Kingston Allotment, Gila National Forest

Dear Mr. Manning and Gila Watch:

This is my review decision on the appeal you filed regarding a decision to authorize and manage livestock grazing on the Kingston Grazing Allotment.

### **BACKGROUND**

On February 23, 1999, District Ranger James E. Paxton, as the Responsible Official (RO) issued a Decision Notice and Finding of No Significant Impact (DN/FONSI) concerning the implementation of "Alternative E" on the Kingston Grazing Allotment, Black Range Ranger District, Gila National Forest. This decision is subject to administrative review under 36 CFR 215 appeal regulations.

My review of this appeal has been conducted pursuant to, and in accordance with 36 CFR 215.17. I have thoroughly reviewed the appeal record, including the recommendations of the Appeal Reviewing Officer regarding the disposition of this appeal. My review decision, hereby, incorporates by reference the appeal record.

Pursuant to 36 CFR 215.16, on April 21, 1999, Jerry Payne, Acting District Ranger, and Art Telles, District Range Staff, contacted Thomas Manning and Mike Souber (Gila Watch representative), at separate times, to offer an opportunity to seek informal disposition of the appeal. The contents of the appeal and environmental assessment (EA) were discussed, but no resolution was achieved during the telephone conversations. It was agreed between Acting District Ranger Payne and the appellants to allow the appeal process to proceed.



## **APPEAL ISSUES AND FINDINGS**

The appellants submitted an appeal, containing 84 enumerated appeal issues with attached text. This review and decision has responded to each appeal issue where feasible. In other instances, issues were consolidated by related subject matter.

The appellants's issues are addressed as follows:

### **ISSUES 1 and 2: Production Utilization (PU) studies must be completed before making a decision.**

**Contention:** The appellants allege that the decision violates the National Environmental Policy Act (NEPA) by making a decision concerning livestock numbers before collecting information necessary to establish those numbers. Appellants further contend that adjusting permitted numbers three years from now is outside of the current NEPA process.

**Response:** The RO's decision established allowable use limits as follows:

- 40% in winter use areas,
- 35% in upland areas where there are no threatened or endangered species,
- 25% in upland areas where threatened or endangered species exist,
- 20% in riparian areas,
- 30% on mountain mahogany allotment-wide, and
- 50% on mountain mahogany in winter use areas [Decision Notice (DN), p. 1-2].

Capacity has been estimated for the allotment using the best available information. The RO had sufficient information upon which to base a decision concerning permitted numbers. The RO chose to authorize 300 head, with 100 head of non-use for the first three years. As part of his decision, the RO chose to conduct PU studies to determine actual carrying capacity, and adjust permitted numbers up or down, as necessary after the first three years of the permit (DN, p. 1).

The current ten year term grazing permit for the Kingston allotment is for 300 head yearlong (EA, p. II-16). Historic carrying capacity estimates (unadjusted for the additional pastures) have ranged from 150 to 200 since 1956 (record at 22-08). The current capacity estimate includes the grazing capacity of the Cave Creek and Mineral pastures and includes an allowance for additional capacity derived from browse use. The estimated capacity was originally set at approximately 180 head yearlong. The permittee stated, that 200 head were needed to maintain a viable operation. The RO recognized that the permittees request for 200 head was within the accuracy of the original capacity estimate and set the permitted use at 200 head yearlong (record at 22-08 and DN, p. 34).

Alternative E includes authorizing livestock numbers consistent with the current estimate of grazing capacity (EA, p. III-37). The effects of this alternative were analyzed and disclosed based upon 200 head yearlong (EA, p. II-19). Therefore, the effects of the selected alternative are based upon the assumption that livestock will be grazing at the allowable use levels described above. The decision also provides for monitoring utilization and application of utilization standards through permit administration.

The RO recognized that the production figures are uncertain, and included PU studies to refine the capacity estimate in the selected alternative (DN, pp. 4, 35). The RO's decision included validating the current capacity estimate through PU studies (DN, p. 1). The RO crafted the selected alternative to provide for flexibility in administering the grazing permit by limiting stocking to 200 head annually for the first three years. This lower stocking rate is reasonably consistent with the estimated capacity. Subsequent modifications to the number of livestock authorized may be taken.

**Finding:** The RO is affirmed in regard to the appellants' issues.

### **ISSUE 3: North and South High Pastures.**

**Contention:** Appellants question the use of the North and South High pastures for grazing if they "are not cow country" and do not have the capacity for regularly scheduled use.

**Response:** Appellants raise a question rather than an appeal issue. The selected alternative makes the North and South High pastures available to the permittee as relief pastures. These pastures would be used no more than one year in five. They would be available in the event that drought or some extraordinary circumstances necessitated reducing grazing pressure on the planned summer pasture (EA, p. II-19).

Water is available in the High pastures during drought. The record (Doc. 22-06) reflects that the High pastures have very limited capacity due to vegetation and steepness of slopes but are grazeable for a limited amount of time. No capacity was assigned to the High pastures (DN, p. 36) therefore, the stocking rate of 200 head is not based on the use of these pastures.

Section 22 of the project record contains sufficient information for the RO to establish the stocking rate at 200 head yearlong with 100 head of cattle held in non-use. The process of setting a stocking rate relative to an estimated capacity is consistent with Forest Service Handbook (FSH) 2209.21, Chapter 50, subsection 51.1.

**Finding:** The RO had adequate capacity information upon which to make a reasoned and informed decision. The RO adequately analyzed and disclosed the effects of his decision to authorize livestock grazing on the Kingston allotment, including subsequent permit administration actions to implement his decision. Setting a stocking rate was stated in the EA as part of the "Decision to be Made". The RO is affirmed in regard to this issue.

**ISSUES 4 and 5: Capacity determination.**

**Contention:** The appellants contend that the estimated carrying capacity was changed due to the permittee's financial needs. The appellants contend that if the estimated capacity is below current permit numbers, it is not justifiable to permit higher numbers than the estimated capacity.

**Response:** Responses to Issues 1, 2, and 3 respond to Issues 4 and 5. The RO's decision is consistent with FSH 2209.21 procedures for determining stocking capacity by validating the preliminary estimated capacity with PU studies in order to remove any bias in the determination. Permitting 300 head with a 100 head non-use stipulation until the studies are completed, essentially results in stocking the allotment at or near the estimated capacity.

**Finding:** The RO followed Forest Service policies and procedures relating to capacity determination and permit issuance. The RO is affirmed in regard to these issues.

**ISSUE 6: Inconsistency in statements contained in the Kingston EA.**

**Contention:** Appellants raise a question rather than an issue about statements in the Kingston EA. Appellants question whether the Cave Creek and Mineral pastures have already been transferred to the Kingston allotment as a result of the Cave Creek allotment EA or is the transfer of the pastures associated with the Kingston allotment decision?

**Response:** The DN/FONSI (Doc. 02-01) does not state that the allotment boundaries will change as a result of the decision. The decision clearly recognizes that the Mineral and Cave Creek pastures are still part of the Cave Creek allotment, "... Kingston allotment will be utilized as well as the Mineral and Cave Creek pastures of the Cave Creek allotment".

**Finding:** The RO did not permanently changed the allotment boundary of the Kingston allotment. The RO is affirmed in regard to this issue.

**ISSUES 7, 8, 9: Comparison of alternatives relative to the stocking rate and effects of the permitted use.**

**Contention:** Issue 7 states "The estimate of an increase of only 29 head is derived by evaluation of only 200 of the actual 300 head permitted by the alternative, which would have a significantly different effect". Based on Forest Service interpretation of Issue 8, it appears that the appellants contend that there is a significant difference between Alternative F and Alternative E (Preferred Alternative). Issue 9, states that the Forest Service analyzed the consequences of only a partially proposed action.

**Response:** It is unclear what the appeal points are with respect to Issue 7. However, in response to Issues 7 and 8, the relative similarity between Alternative E and Alternative F is related to the numbers of livestock that will actually be grazed (200 vs. 171 head) on the allotment, not the number of livestock on the face of the permit (300 head). The responses to Issues 1 through 3 address Issues 7 and 8.

In response to Issue 9, the RO clearly described the content of each alternative and established a preliminary capacity estimate which constrains the stocking rate to 200 head annually for the first three years. The effects analysis estimated each alternatives' effects on the environment based on the actions associated with implementation of the alternative (EA, Doc. 04-08).

**Finding:** The RO stated the estimated capacity, the number of livestock to graze the allotment, and that the stocking rate will be verified through field studies. The RO completed an in-depth analysis of each alternative considering all of the associated actions in the effects analysis. The consequences were thoroughly disclosed relative to the alternatives considered. The RO is affirmed in regard to these issues.

**ISSUES 10 and 11: Riparian areas affected and resource improvement related to stocking rate.**

**Contention:** With issue 10, the appellants claim that the impacts on riparian areas are due to livestock grazing, not the 50 head of elk that graze the allotment year-round. With issue 11, appellants claim that since improvement in conditions will be " 'not to a level of significance' " stocked with 200 head, then the stocking rate should be less than 200.

**Response:** The EA (Doc. 04-08, pp. III-47 to 50) analyzed the effects of grazing on soils and watershed conditions. Grazing by livestock and elk in conjunction with other activities, impact vegetative ground cover and water quality. It was also recognized that elk, to a lesser degree than livestock, impact soil condition in the form of compaction, loss of ground cover, increased runoff, increased soil loss, and decreases in water quality in flowing streams (Percha Creek). This situation is applicable to all alternatives, according to the EA. Alternative E merely describes a possible effect to the resources during below normal precipitation (a stress period) when higher demand is placed on riparian areas for food and water. In addition, the EA contains mitigation measures to limit use to 20% within riparian areas.

In response to Issue 11, the EA (pg. III-38) states that riparian conditions are expected to improve with the 20% utilization standard applied under Alternative E. The statement regarding " 'not to a level of significance' ", relates to a slow rate of improvement of riparian condition with the combined livestock and elk use. Rest periods during the summer and the possibility of elk numbers increasing can place a greater demand on riparian areas during low precipitation years.

**Finding:** The RO identified the effects of Alternative E on riparian areas and projected improvement in riparian conditions. The RO is affirmed in regard to these issues.

**ISSUE 12: Violation of NEPA, NFMA, PRIA, regulations, public land management ethics.**

**Contention:** Appellants contend that the Forest Service did not use a scientific basis for determining estimated capacity, but rather hearsay statements (Bickle, 1998, pers. comm.).

**Response:** Responses to Issues 1, 2, and 3 have addressed the basis for capacity determination.

**Finding:** The RO used the best available information to develop the capacity estimate. The RO did not violate any law, regulation, policy or procedures in determining the grazing capacity. The RO is affirmed in regard to this issue.

### **ISSUE 13: Over utilization by livestock.**

**Contention:** Appellants contend that the Forest Service is resorting to over utilization of the resource by livestock to reduce browse density. Over utilization of the range by cattle has been identified by the Forest Service as the primary cause for increased encroachment of pinyon/juniper and shrub species.

**Response:** Responses to Issues 1, 2, and 3 apply to this issue regarding capacity determination. The utilization standards for both herbaceous and shrub species will regulate actual grazing use on the allotment. The standards are established to meet the physiological needs of the vegetation with respect to livestock forage preference (Docs. 1C-06, 04-08, 22-01, 22-08).

**Finding:** The RO did not prescribe over utilization of the range resource as alleged by the appellants. The RO is affirmed in regard to this issue.

### **ISSUES 14 and 15: Biased EA.**

**Contention:** Appellants assert, "The EA was used as a means of justifying the desired action, rather than as an objective analysis forum." Appellants also argue that the EA's purpose and need is slanted to justify continuation of livestock grazing as the primary use on the allotment.

**Response:** An EA's purpose is to briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or 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 EA objectively documents the effects of the proposed action and each alternative to the proposed action. Effects are disclosed for the various components of the human environment: soil, air, water, vegetation, wildlife, and effects on people including; social and economic, heritage resources, and public safety.

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 statement justifies the proposal to continue livestock grazing; it should. The purpose and need statement cites applicable agency policy, regulation, and law. It does not suggest that grazing is, or should be the primary use (EA, pp. I-8 through I-11). See also response to issues 20-25.

**Finding:** The RO adequately stated the purpose and need for the proposed action, and adequately analyzed and disclosed the effects of alternatives considered. The RO is affirmed in regard to these issues.

### **ISSUE 16: Biased social issues.**

**Contention:** Appellants contend that throughout the EA social issues represent the ranching community to a much greater degree than those of other forest users.

**Response:** Scoping comments received in response to the proposal to authorize grazing on the Kingston allotment, represent both the ranching community and other forest users. Many comments were broad in nature and were appropriately not identified as significant issues (record at 18B and 18C). The EA states, on page III-60, "There may be an increase in recreation use, ecotourism may increase, and if the wildlife were to have a corresponding increase in numbers, there could potentially be a large increase in hunting permits and the revenue associated with recreational hunting. From comments received, this would be viewed as positive by a large part of society and as negative by a large part of society." Additionally, the EA states on page III-66, "In the public scoping for this EA, numerous individuals, primarily recreational hikers, expressed a concern that cattle reduced their recreational experience along the Percha Creeks. From the sentiment expressed by this segment of the public, a reduction or elimination of cattle grazing in the recreation areas was preferred."

**Finding:** The EA adequately recognizes both the ranching community and other forest users. The RO is affirmed in regard to this issue.

#### **ISSUES 17, 18, 19: Consideration of comments.**

**Contention:** Appellants assert that public comments were inadequately considered in the analysis and cite some of their own comments and the responses given.

**Response:** Appellants reference a copy of a comment letter obtained from the interdisciplinary team with notes in the margin. This was an annotated working copy. The record contains comments to both EAs made available for public review and comment (record at 16A). The RO analyzed over 400 comments, combined those that were similar, and documented 161 responses. The final, complete responses are documented in the EA, Appendix P, attached to the DN/FONSI. 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. Appellants' comment numbers 8 and 9 are documented as #2 on page 12 of Appendix P. Appellants' comment number 22 is documented as #12 on page 31 of Appendix P. Comments 20 and 28 were not included in the 12 carried into Appendix P, and the record reflects no response to these two comments.

**Finding:** The RO analyzed over 400 comments and documented 161 responses. The RO adequately considered public comments in his decision, and is affirmed on these issues.

#### **ISSUES 20 to 25: Forest plan and project scope.**

**Contention:** Appellants contend that the RO failed to inform the public of other management options and continued a commitment to livestock grazing as the predominant land use. Appellants further contend that the Gila National Forest has failed to reassess their renewable resource programs, and arbitrarily narrowed the scope of the analysis.

**Response:** All of the above allegations are in fact about the scope of the analysis. The proposed action is to authorize a specified number of livestock to graze the Kingston allotment, under a specified management system, for a ten year period. The proposed action provides a focus for the analysis of effects of this action and its alternatives.

The purpose and need statement specifies the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action (40 CFR §1502.13), further defining the scope of the analysis (EA, pp. I-8-11). The stated decision to be made further defines the scope by enumerating the components of the decision (EA, pp. I-11-12).

Appellants suggest that the scope of the analysis should have been expanded to include decisions concerning woodland management activities. While woodland treatments might have merit, the RO has the discretion to determine whether or not to include such activities in this proposal and analysis. Such activities could be the subject of a separate proposal and analysis.

Appellants suggest that the scope of the analysis should have been expanded to include decisions concerning the mix of land uses on the allotment. The EA states that it is tiered to the Gila Forest Plan EIS (EA, p. I-9). The Kingston allotment is located in Management Area 2G. The forest plan reflects decisions concerning the mix of land uses in Management Area 2G (Doc. 07-02). The forest plan prescribes management emphasis on wildlife habitat, natural conditions in the wilderness, fuelwood, and livestock grazing. The forest plan does not place any land use above another.

**Finding:** RO appropriately defined the scope of the analysis, consistent with 40 CFR 1508.25. The RO is affirmed in regard to these issues.

#### **ISSUES 26 to 28: Effects.**

**Contention:** Appellants contend the Forest Service discriminated against environmentally oriented groups and individuals who expressed a desire to have economic, social, and environmental effects applicable to them analyzed. Appellants specifically request an analysis of effects on taxpayers, and consideration of grazing administration costs.

**Response:** The RO analyzed and disclosed effects on the various components of the human environment: soil, air, water, vegetation, wildlife, and people (including, social and economic effects, heritage resources, and public safety) (EA, Chap. III). The responsible line officer determines the scope, appropriate level, and complexity of economic and social analysis needed (FSM 1970.6). The EA shows taxpayer costs in the investment analysis table on page III-56. Economic effects are disclosed in the EA on pages III-50-57. Social impacts are described in the EA on pages 57-64. The narrative on page III-60 discusses potential benefits for recreation, ecotourism, and hunting. Effects on the physical and biological components of the environment are detailed in the balance of Chapter III. The physical and biological effects objectively disclose the benefits and trade-offs of each alternative.

Grazing administration costs are not an environmental effect nor are they an economic effect on the human environment. As pointed out by the appellants, the RO found administrative costs to be outside the scope of economic analysis needed for a decision (DN, p. 47).

**Finding:** The effects analysis disclosure is sufficient for the RO to make an informed decision and finding of no significant impact. The RO is affirmed in regard to these issues.

**ISSUES 29 to 33: Significance of effects.**

**Contention:** Appellants allege that the RO failed to take a hard look at environmental consequences and arbitrarily found no significant impacts. Appellants suggest that the effects analysis should have included pinon-juniper resource concerns, fire frequency, deteriorating and decreasing rangeland, and animal habitat, and that the range of alternatives should have included a variety of multiple uses. Appellants also allege that effects were not considered in the proper context and that national issues should have been addressed. Finally, appellants suggest a number of significance considerations were ignored: severity of impact, controversy, unique characteristics, critical habitat, uncertainty, and cumulative impacts.

**Response:** The analysis does include discussions concerning the appellants' stated resource concerns. These concerns are all part of the purpose and need for action (EA, pp. I-8-11). The effects disclosure includes discussions in these areas as well (EA, pp. 28-47 and 66-67). Appellants again want to broaden the scope of the analysis to include alternative uses (see response to issues 20-25). Again, the mix of land uses is decided at the forest plan level.

The effects of the proposed action and alternatives were appropriately analyzed at the local and regional levels. The environmental effects of this action are localized in nature (EA Chap. III). Social and economic effects were analyzed at both the local community level and at a three county area level. The EA states that in looking beyond the local area, communities become more economically and socially diverse and the impacts less evident.

The RO responds to each of the appellants' cited significance considerations in his finding of no significant impact (DN, pp. 6-7). The effects analysis supports the RO's findings. Appellants cite a number of resource issues as a basis for their contention: pinon-juniper encroachment, declining grasslands, potentially endangered trout, willow flycatcher habitat, riparian areas, erosion, habitat loss, and desertification. The EA discloses effects relative to pinon-juniper encroachment (EA, pp. 66-67), grassland and riparian condition (EA, pp. 28-32), wildlife and wildlife habitat, including threatened and endangered species (EA, pp. 33-47), and watershed condition (EA, pp. 47-50).

**Finding:** The effects analysis and disclosure is sufficient for the RO to make an informed decision and finding of no significant impact. The RO is affirmed in regard to these issues.

**ISSUE 34: Collisions with cattle along Highway 152.**

**Contention:** Appellants contend that grazing the pasture along Highway 152 puts the public at unnecessary risk.

**Response:** The RO found there were no significant effects on public safety (DN, pp. 6-7). This finding is supported by the effects disclosure in the EA (EA, p. 67). The EA effects disclosure notes that cattle and wildlife are occasionally found on the highway. It further states that the highway has many signs warning of the presence of cattle and wildlife.

**Finding:** The RO adequately considered the effects on public safety related to New Mexico State Highway 152, and found no significant effect. The RO is affirmed in regard to this issue.

**ISSUES 35, 36, 37: Sustained yield and long-term productivity.**

**Contention:** Appellants contend, "Sustained yield has not been achieved as 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 in, not been assured by the EA, as it has not addressed long-term productivity declines associated with pinon-juniper encroachment. The EA has presented no 'evidence' [40 CFR 1500.2 (b)] that the P-J encroachment has stabilized, not that sustainable capacity has been determined". Forest Service assumes that utilization standards will maintain plant communities in a healthy condition but the agency should provide evidence to support such assumptions. The Forest Service has not discussed encroachment of other woody species such as mountain mahogany and mixed conifers.

**Response:** Management of P/J encroachment is not within the scope of the Kingston analysis (Doc. 04-08). The EA discloses the effects of varying utilization levels by alternatives. The alternatives are compared against each other, considering the effects of the anticipated use levels on the vegetation and related resources. The EA (Doc. 04-08) concluded which alternatives would meet the desired conditions. The EA states that for Alternative E, use levels would be dramatically lower than current management, and would move vegetation toward improved conditions.

**Finding:** The RO clearly defined the scope of the analysis and determined that issues dealing with woody species encroachment were outside the scope of the Kingston analysis. The EA contains a rational assessment of effects by alternative and provides a logical conclusion of the grazing impacts on resource conditions. The RO is affirmed in regard to these issues.

**ISSUES 38 and 39: Improvement of range condition and P/J encroachment.**

**Contention:** Appellants contend that the EA has not justified that improved range conditions would stabilize P/J encroachment. The Forest Service needs to justify, based on scientific data, that continued livestock grazing would not exacerbate the woody vegetation encroachment problem on the Kingston allotment.

**Response:** The EA does not make any claims regarding the stabilization of P/J encroachment as a result of improved range conditions, contrary to appellants' assertions. The EA (Doc. 04-08) discusses the existing condition on the allotment stating that approximately 50% of the allotment contains poor range condition and 10% is rated in very poor condition. The EA states that current range conditions are attributed to P/J encroachment, past and current stocking rates, past management practices, poor ground cover, and highly erosive soils. The fact that P/J encroachment is a contributing factor to poor and very poor range conditions, does not imply that all of the poor and very poor range is currently affected by P/J encroachment.

Assessment of woody vegetation encroachment is not within the scope of this analysis. The effects analysis has determined that the preferred alternative will favorably affect vegetation conditions, likewise improving soil and watershed conditions.

**Finding:** The RO clearly defined the scope of the analysis and determined that issues dealing with woody species encroachment were outside the scope of the Kingston analysis. I also find that the EA contains a rational assessment of the grazing effects by alternative and Alternative E is likely to improve soil, watershed, and range conditions. The RO is affirmed in regard to these issues.

**ISSUES 40 to 46: P/J encroachment.**

**Contention:** Appellants continue to assert that management of woody vegetation encroachment is within the scope of the analysis and should have been evaluated in the EA. The Forest Service failed to analyze the effects of P/J encroachment, which is a violation of NEPA. The EA failed to discuss the relationship of short-term uses and long-term productivity, also another violation of NEPA. P/J encroachment is a world-wide problem and failure to address the global environmental implications of the cumulative effects of P/J encroachment is a violation of NEPA. Failure to deal with the P/J encroachment issue constitutes a violation of Multiple Use and Sustained Yield Act, that unsustainable capacities can be expected from the RO's decision. The Forest Service must consider preventative management practices in P/J encroachment prone areas such as the Kingston allotment.

**Response:** The appellants assert that woody vegetation encroachment should have been analyzed in the EA. The RO has the authority to define the scope of the analysis and the "Decision to be Made" based on public input, NEPA regulations, and Forest Service policy. The EA (Doc. 04-08, pp. I-11 to I-12) stated the "Decision to be Made" in which it clearly did not include P/J management as part of the decision. Since P/J management was not part of the "Decision to be Made", it is therefore inappropriate to analyze it in the Kingston EA which deals with authorizing grazing and allotment management.

The EA addressed the direct and indirect affects of the alternatives on the socio-economic, biological and physical components of the environment relative to the issues raised in response to the proposed action. The EA also addressed the cumulative impacts of each alternative considering past, present, and foreseeable future activities on the allotment, therefore addressing the short-term uses in relation to long-term productivity. The cumulative effects analysis included a discussion concerning alternative effects on P/J encroachment.

**Finding:** The RO clearly defined the scope of the analysis and "Decision to be Made" which did not include management of P/J encroachment. The RO also assessed the short-term uses in relation to long-term productivity considering the scope of the analysis. The RO is affirmed in regard to these issues.

**ISSUES 47, 48, 56, and 58: Multiple uses.**

**Contention:** Appellants contend that the RO failed to include a variety of alternative uses, other than grazing.

**Response:** Appellants again contend that the scope of the analysis should have been expanded to include decisions concerning the mix of land uses on the allotment. The EA states that it is tiered to the Gila Forest Plan EIS (EA, p. I-9).

The forest plan reflects decisions concerning the mix of land uses to be provided in Management Area 2G, which includes the Kingston allotment (Doc. 07-02). That decision was made and documented in a Record of Decision for the Gila National Forest Land and Resource Management Plan Environmental Impact Statement in 1986. This project level analysis and decision implements the forest plan decision, it does not re-open those decisions.

**Finding:** The RO is not required to re-open forest plan decisions, and is affirmed in regard to these issues.

**ISSUE 49: "No Action" alternative.**

**Contention:** Appellants assert that the Rescission Act (P.L. 104-19) prevents the RO from choosing the No Action alternative, concluding that it was not viable and therefore not considered.

**Response:** There is nothing in the Rescission Act that prevents the RO 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." This permit is not expiring nor being waived prior to completion of this NEPA analysis. Upon completion of a NEPA analysis and decision, the RO has the authority and discretion to take whatever permit action is necessary to conform to the decision being implemented.

**Finding:** The No Action alternative was adequately considered in the Kingston analysis. The RO is affirmed in regard to this issue.

**ISSUES 50 to 55: Range of alternatives.**

**Contention:** Appellants contend that the Forest Service did not consider any viable alternatives. Appellants suggest that alternatives B, D, and E are above the estimated capacity and alternative C is not scientifically justified, and therefore these alternatives are not viable. Appellants further suggest alternative D is an act of discrimination because the RO considered an alternative from the permittee but not from any other interested parties.

**Response:** Agency policy requires consideration of a No Action alternative, the proposed action, and a No Change (continuation of current management) alternative (FSH 2209.13 Sec. 91.24). Alternative B represents the current term permit. Alternative C represents current management, as actually practiced on an annual basis through permittee instructions. Alternatives B and C represent the agency's policy for consideration of no change, irrespective of capacity.

Alternative D was suggested by the permittee and the RO chose to consider it. PU studies are included in this alternative along with a 100 head non-use provision for three years. Consequently, this alternative was evaluated at 252 head, not 352 head as the appellants contend (EA, p. 17). Alternative E includes a 100 head non-use provision for the first three years of the permit, therefore it was analyzed at 200 head, not 300 head as the appellants suggest (EA, pp. 18-

19). Alternative F was dropped from detailed study because the effects of 171 head were indistinguishable from those of 200 head in Alternative E.

Anyone interested in the proposed action may suggest an alternative for consideration. For an alternative to be reasonable, it must meet the stated purpose and need, and address one or more issues. Appellants keep returning to the consideration of alternative uses of the land (e.g. eliminate grazing and emphasize other uses). Part of the purpose and need includes implementation of the Gila Forest Plan, which identifies grazing as an authorized land use. Also refer to response for issues 47, 48, 56, and 58.

**Finding:** The RO appropriately defined the scope of the analysis and analyzed a reasonable range of alternatives. The RO is affirmed in regard to these issues.

### **ISSUE 57: Public Rangelands Improvement Act.**

**Contention:** Appellants contend, "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 ...' ". The appellants assert that after 20 years since the enactment of the Public Rangelands Improvement Act (PRIA) the range condition has not improved.

**Response:** Section 2.(a)(1) through (a)(4), Section 2.(b)(2) of PRIA provide general statements of findings and declaration of policy. The RO's decision is fully consistent with these provisions of PRIA. Section 4.(b) of PRIA is not applicable to the administration of National Forest System lands.

**Finding:** The RO's analysis and decision is in compliance with PRIA. The RO is affirmed in regard to this issue.

### **ISSUES 59 through 68: Suitability.**

**Contention:** Appellants contend that the Forest Service failed to determine suitability of grazing, and evaluation of alternative uses foregone. Appellants also take issue with the Gila Forest Plan.

**Response:** Appellants have pointed out the response to comment #19 on page 19 of Appendix P (attached to the Decision Notice). The response states the agency's position that suitability is decided at the forest plan level, and not the project level.

While appellants state their disagreement with this position, they recognize it, so there is little need to discuss this issue further.

The appellants' other contentions allege inadequacies in the Gila Forest Plan and its failure to keep pace with changing social values and demands on the Forest. Issues of this nature are outside the scope of this project level analysis. The forest plan revision will provide the appropriate forum for suitability issues. The Gila Forest Plan is scheduled to begin revision in the year 2000.

**Finding:** Suitability and related analyses are appropriate at the forest plan level and not through project level activities. The RO is affirmed in regard to these issues.

**ISSUE 69: Unquantified environmental impacts, values, and amenities.**

**Contention:** Appellants charge that the EA did not discuss the relationship between the cost-benefit analysis and unquantified environmental impacts, values, and amenities as required in Sec. 102(2)(B) of NEPA.

**Response:** The cited section of NEPA directs agencies to identify methods which will insure that presently unquantifiable environmental amenities and values may be given appropriate consideration in decision making, along with economic and technical considerations. If there is an inconsistency with this section of NEPA, it would have to be with the methods developed by the agency and documented in the Forest Service manuals and handbooks. Such inconsistencies are clearly outside the scope of this review.

There is no requirement in Forest Service policy to evaluate a relationship between cost-benefit analyses and unquantified environmental impacts, values, and amenities. A cost-benefit analysis is an internal, economic efficiency determination, focused on returns on investments. It is one consideration among many in the decision at issue. The EA provides both a cost-benefit analysis and an objective disclosure of effects of the proposed action and alternatives. The analysis is sufficient to provide the RO a clear basis for choice (40 CFR 1502.14). It is up to the RO to decide which considerations might be more important than others, and to explain this in his/her decision rationale (FSH 1909.15 Sec. 43.21).

**Finding:** Analysis methods required by Sec. 102(2)(B) of NEPA are outside the scope of this review. The RO adequately considered the effects of the proposed action and alternatives in making a decision (DN, pp. 4-5). The RO is affirmed in regard to this issue.

**ISSUE 70: Professional and scientific integrity.**

**Contention:** Appellants contend that the EA fails to ensure professional and scientific integrity in discussions related to economic sciences.

**Response:** The EA identifies the methodologies used to analyze economic effects and references information sources (EA, pp. 50-57). This constitutes high quality information and accurate scientific analysis (40 CFR 1500.1(b) (Docs. 24-01 through 24-05)).

**Finding:** Development of analysis methods as required by Sec. 102(2)(B) of NEPA are outside the scope of this review. The RO adequately disclosed methodologies used in the economic analysis, used quality information, and conducted appropriate analysis. The RO is affirmed in regard to this issue.

**ISSUE 71: Payments to counties.**

**Contention:** Appellants contend, "The cost-benefit analysis and the EA failed to include or incorporate substantial costs to the Forest Service and the American people including payment in lieu of taxes (PILT) program and the twenty-five percent fund in a succinct fashion that discloses actual monetary costs associated with alternatives, and whether the alternatives will actually be cost effective for the United States citizens."

**Response:** The EA discloses combined PILT and twenty-five percent fund payments to counties on page 55. The narrative accompanying the table, points out that total payments to counties is not affected by the alternatives.

It goes on to explain that for changes in the 25% payments between alternatives, there would be an offset in PILT payments. The EA also discloses the source of costs and returns, and displays them in tabular form for comparison. The economic effects discussion in the EA is a synopsis of a more detailed report found in the project record (Doc. 24-05).

Appellants develop an economic argument for consideration of alternative uses. Assuming this argument has merit, it should be considered as a revision topic for the Gila Forest Plan. The Forest Plan is the appropriate level of Forest Service decision making for deciding suitability for various land uses.

**Finding:** The economic effects analysis disclosure is sufficient for the RO to make an informed decision and finding of no significant impact. The RO is affirmed in regard to this issue.

**ISSUES 72 and 73: Riparian areas must be considered.**

**Contention:** Appellants contend that riparian area recovery is a significant issue and the EA must consider the effects of alternatives on all riparian areas. It is unacceptable for the Forest Service to only recognize and strive to improve those riparian areas that are being monitored. The Forest Service must analyze all riparian areas, including the springs used as livestock watering sources.

**Response:** The need to improve riparian condition was addressed in the "Purpose and Need" for the project (EA, Doc. 04-08). The DN/FONSI (Doc. 02-01) identified riparian health as an issue. The effects analysis in the EA disclosed the effects of the alternatives on riparian areas. Alternative E is projected to have the most beneficial effect on riparian areas than any other alternative due to the frequency and length of rest that the riparian areas are expected to receive as a result of the grazing system proposed for Alternative E. In addition, the North and South Trujillo pastures are designed to have winter use with livestock removed from the pastures by the end of March, therefore, optimizing undisturbed growing conditions for riparian species.

**Finding:** The RO considered riparian areas in the environmental analysis of the Kingston allotment as an issue and the effects on the riparian areas was used as part of the decision criteria in selecting Alternative E as the preferred alternative for implementation. The RO is affirmed in regard to these issues.

**ISSUE 74: Use levels for threatened and endangered species.**

**Contention:** Appellants contend that the RO's decision is not consistent with the "Guidance Criteria for Determining the Effects of Issuing Grazing Permits" because the allowable use levels exceed the recommended level for TES species according to R3 Goshawk guidelines .

**Response:** Utilization standards are established through site specific NEPA analysis, which has occurred on the Kingston allotment (Docs. 04-08, 23-02, 23-03). Development of site specific use standards is consistent with the intent of the Forest Plan Amendment (June 1996) for management of TES species and their habitat, which supersedes the R3 Goshawk Guidelines (Docs. 04-08). The allowable use levels for Alternative E are designed specifically for areas that contain T&E species and their habitat.

A Biological Assessment and Evaluation (BAE) was completed for the allotment (Doc. 23-02), as well as, an effects analysis (Doc. 23-03), addressing the consequences of implementing the allowable use levels as proposed in Alternative E. The determination of the effects as a result of the BAE for TES species and their habitat, is "may affect, not likely to adversely affect". This effects determination is consistent with the "Guidance Criteria" and concludes consultation with the Fish and Wildlife Service for the Kingston allotment.

**Finding:** The RO's decision is consistent with the "Guidance Criteria" and Forest Plan (as amended) for the protection of TES species and their habitat. The RO is affirmed in regard to this issue.

**ISSUE 75: Use levels are unsubstantiated.**

**Contention:** Appellants contend that the utilization levels contained in the decision are above the level specified in the "Guidance Criteria", and therefore, the effects determination is unsubstantiated and contrary to the evidence.

**Response:** Response to "Issue 74" responds to this issue.

**Finding:** The RO's decision is consistent with the "Guidance Criteria". The RO is affirmed in regard to this issue.

**ISSUE 76: Use levels relative to fire frequency.**

**Contention:** Appellants contend that the utilization levels do not provide the conditions to promote prescribed fire which is needed to maintain habitat diversity.

**Response:** Fire management issues were identified as being outside the scope of this analysis and are not a part of the "Decision to be Made" (Doc. 04-08).

**Finding:** The RO acted within the scope of the analysis. The allowable use levels are expected to meet the purpose and need for the action. The RO is affirmed in regard to this issue.

**ISSUE 77: Maximum allowable use.**

**Contention:** Appellants contend that if the average utilization level of 20% is needed to maintain ecosystem diversity then it is inappropriate to graze at higher levels anywhere on the allotment.

**Response:** The direction in the Gila Forest Plan allows for the assignment of allowable use levels as developed through the NEPA process to address site specific issues. The allowable use levels consider such things as; the existing resource conditions, management system being employed, and the desired conditions for the allotment, to name a few.

The allowable use levels determined to be appropriate for the Kingston allotment are a result of the Kingston NEPA analysis. The allowable use levels respond to site specific issues and vary depending on season of use, resource conditions, management objectives, and landform.

**Finding:** The RO applied a reasonable approach to determining allowable use levels for the Kingston allotment. The RO is affirmed in regard to this issue.

### **ISSUES 78 and 79: Grazing in wilderness and preserving wilderness values.**

**Contention:** Appellants contend that the EA and decision did not adequately address wilderness considerations. "The decision does not prevent increases in livestock use in areas of wilderness ecosystem". Appellants further contend that distributing livestock to new areas within the wilderness would result in deterioration of natural ecosystems.

**Response:** The EA (Doc. 04-08) states that 1,837 acres of the Aldo Leopold Wilderness is located within the Kingston allotment, near Hillsboro Peak, which is adjacent to the North High pasture. The amount of wilderness area within the allotment is nominal. The occurrence of grazing in the North High pasture is not to exceed 1 year in a 5 year period, therefore, the grazing impact is expected to be minimal.

There is no evidence in the record or the RO's decision that would degrade wilderness values for that portion of the Aldo Leopold Wilderness located within the Kingston allotment.

**Finding:** The RO adequately considered maintenance of the wilderness character in his decision. The RO is affirmed in regard to these issues.

### **ISSUE 80: Significance test in FONSI is not justifiable.**

**Contention:** Appellants allege that eight of the ten significance considerations in the FONSI have not been justified (numbers 1-4, 6, 8-10).

**Response:** The FONSI does little to tie conclusions back to the EA. Readers are left to their own devices to find the corresponding effects disclosure which supports the finding. The EA effects discussions supporting the findings are found on the following pages:

1. public health and safety - page 67;
2. park lands, prime farm lands, wetlands, ecologically critical areas, cultural resources - pages 5-6, 29-32, 64-65;
3. controversy over effects - Chapter III and EA comments (record at 16A) *this relates to disagreements over what the effects will be, not competition for land uses;*
4. uncertainty of effects - Chapter III;

6. cumulatively significant effects - pages 67-68;
8. threatened and endangered species - pages 40-43;
9. violation of Federal, State, or local laws - Chapter III;
10. effects to consumers, civil rights, minority groups or women - pages 57-64.

**Finding:** The effects analysis and disclosure are sufficient for the RO to make an informed finding of no significant impact. The RO is affirmed in regard to this issue.

### **ISSUE 81: Mitigation.**

**Contention:** Appellants contend, "The Forest Service has confused mitigation measures with the environmental analysis that they state is necessary to accurately determine carrying capacity."

**Response:** Carrying capacity is predicated on the amount of forage allowed to be used by livestock. The RO, in selecting Alternative E, chose to set the allowable use levels as stated in response to Issues 1 and 2. The RO made a commitment to monitor this use. If after monitoring, the RO finds that average use is above or below this allowable level, permitted numbers will be adjusted.

The end result is that the specified percentage of forage produced on the allotment will be utilized. The selected alternative includes the assumption that 200 head yearlong will result in forage utilization at the prescribed levels.

Monitoring will test this assumption, and subsequent adjustments in permitted numbers will be made as needed. Whether this adjustment is considered mitigation or not is irrelevant. It is a part of the selected alternative and the effects of this action are analyzed and disclosed.

**Finding:** The RO appropriately included monitoring to validate the estimated carrying capacity. The RO made a commitment to making necessary adjustments in his decision. The RO is affirmed in regard to this issue.

### **ISSUE 82: Mineral supplements and salting in wilderness.**

**Contention:** Appellants state, "Nothing in the mitigation measures would prevent mineral supplements and salting from increasing livestock usage and establishing it in new localities, within areas of the Aldo Leopold Wilderness Area."

**Response:** Appellants are correct. The selected alternative does, however, establish allowable use levels as described in response to Issue 1 and 2.

**Finding:** The RO appropriately included mineral supplements and salting in managing livestock distribution. The RO is affirmed in regard to this issue.

### **ISSUES 83 and 84: Forest Service delinquency in carrying out past monitoring and purpose for NEPA.**

**Contention:** The Forest Service has failed in the past to complete the monitoring that it has promised or committed to, such as 1995 NEPA processes. The purpose of NEPA is to help public officials understand the environmental consequences of actions taken.

**Response and Finding:** Past monitoring performance by the Forest is not within the scope of this analysis.

**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: (a) decision logic and rationale were generally clearly disclosed; (b) the benefits of the proposal are identified; (c) the proposal and decision is 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 records.

**APPEAL DECISION**

After a detailed review of the record and the ARO recommendations, I affirm the Responsible Official's decision, for the Kingston Allotment, to authorize grazing and implement grazing management actions.

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

Sincerely,

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

Enclosure

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