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Department of
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Forest
Service

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File Code: 1570-1/2200

Date: June 27, 2001

Martin Taylor
Center for Biological Diversity
P.O. Box 710
Tucson, AZ 87505

**CERTIFIED MAIL -
RETURN RECEIPT REQUESTED**
7099 3220 0000 8709 9863

Re: Appeal #01-03-00-0030-A215, Kane Ranch Allotment Decision, North Kaibab Ranger District, Kaibab National Forest

Dear Mr. Taylor:

This is my review decision concerning the appeal you filed regarding the Decision Notice and Finding Of No Significant Impact, which authorize grazing and implement the grazing management strategy on the Kane Ranch Allotment.

BACKGROUND

District Ranger Leonard issued a decision on March 23, 2001, for the above-named allotment. The decision resulted in the selection of the following alternative and authorization:

Kane Ranch Allotment, Alternative 6, which authorizes: (1) Central Winter Allotment, 400-800 head of cattle (Cow/Calf) to graze May 1-July 14 annually; (2) Central Summer Allotment, 400 head of cattle (Cow/Calf) to graze June 1-July 14, and 800-1200 head of cattle (Cow /Calf) to graze July 15-October 29 annually; (3) Kane Allotment, 800 head of cattle (Cow Calf) to graze October 30-November 12 annually.

The District Ranger is identified as the Responsible Official, whose decision is subject to administrative review under 36 CFR 215 appeal regulations. Pursuant to 36 CFR 215.16, an attempt was made to seek informal resolution of your appeal. The record indicates that informal resolution was not reached.

My review of this appeal has been conducted in accordance with 36 CFR 215.17. I have reviewed the appeal record and the recommendation of the Appeal Reviewing Officer. My review decision incorporates the appeal record.



APPEAL REVIEWING OFFICER'S RECOMMENDATION

The Appeal Reviewing Officer recommended that the Responsible Official's decision be affirmed and that your request for relief be denied. The evaluation concluded: (a) decision logic and rationale were generally clearly disclosed; (b) the benefits of the proposal were identified; (c) the proposal and decision 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 record and the Appeal Reviewing Officer's recommendation, I affirm the Responsible Official's decision concerning the above-named allotment, which authorizes grazing and implementation of management actions.

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

Sincerely,

/s/ David M. Stewart (for)
JAMES T. GLADEN
Appeal Deciding Officer
Deputy Regional Forester, Resources

Enclosure

cc:
Forest Supervisor, Kaibab NF
District Ranger, North Kaibab RD
Director of Rangeland Management, R3
Appeals and Litigation Staff, R3

REVIEW AND FINDINGS

of the

Center for Biological Diversity Appeal

#01-03-00-0030-A215, Kane Ranch Allotment Decision

ISSUE 1: The decision was made before consultation was complete, violating the National Environmental Policy Act (NEPA) and the Endangered Species Act (ESA).

Contention: The appellant contends that the District Ranger issued a decision notice for the Kane Allotment environmental assessment prior to completion of consultation with the US Fish and Wildlife Service on Brady pincushion cactus, an endangered species found on the adjacent and associated BLM land.

Response: The US Fish and Wildlife Service wrote a letter to both the Bureau of Land Management (BLM) and Forest Service expressing concern for the Brady pincushion cactus and indicated that additional consultation was necessary (Doc. 210). The letter expressed concerns over the efficacy of removing water and supplements from Brady pincushion cactus habitat.

Livestock management activities on BLM lands are clearly connected actions in a NEPA context (40 CFR 1508.25(1)). Therefore, the effects of these connected actions must be analyzed and disclosed in the environmental documentation. The Kane Ranch Allotment Environmental Assessment describes the connected BLM actions and includes disclosure of the effects of these actions.

The Forest Service decision under appeal, however, is limited to authorization of livestock grazing and associated improvements on National Forest System lands. Consultation for these actions was completed as documented in the Responsible Official's decision and in the project record (Doc. 224). The BLM is still in consultation with the US Fish and Wildlife Service and has not yet made a decision concerning authorization of livestock grazing and associated improvements on BLM lands.

The BLM livestock management strategy associated with the selected alternative includes avoidance of Brady pincushion cactus habitat (EA, p. 44). The Forest Service decision does not preclude options by the BLM for mitigation of impacts to the Brady pincushion cactus. Conversely, BLM mitigation measures will not affect the Forest Service decision.

Finding: The Responsible Official appropriately completed consultation for actions described in her decision.

ISSUE 2: The environmental impact of the proposed action is significant, contrary to the finding of no significant impact by the Responsible Official, and requires preparation of an environmental impact statement (EIS) under NEPA.

Contention: Appellant disputes the finding of no significant impact in six areas:

1. Forest Service inappropriately construed the importance of the Kane Ranch decision in a local context.
2. An annual average of nine vehicle accidents with livestock is a significant threat to public safety. *Cryptosporidium parvum* poses a risk to the users of the Grand Canyon National Park.
3. Proximity to unique resources is enough to trigger significance.
4. Many organizations object to the decision, thereby creating controversy, which is significant.
5. The action creates a vested interest with a strong incentive to push for continuance of grazing privileges. Appellant suggests this decision will bias future decisions toward grazing.
6. The US Fish and Wildlife Service comment that the no-action alternative would contribute significantly to the recovery of listed species that occur in the area constitutes significance.

Response:

1. Significance varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend upon the effects in the locale rather than in the world as a whole (40 CFR 1508.27(a)).
2. The environmental assessment indicates that there has been an annual average of nine vehicle accidents related to livestock (EA, p. 30). The selected alternative is predicted to reduce the likelihood of collisions with livestock (EA, p. 54). The Responsible Official found that this reduced likelihood would not pose a significant threat to public health and safety (Doc. 227, p. 13, Decision Notice/Finding of No Significant Impact). The State of Arizona 305(b) Report for the Year 2000 indicates that all waters originating from the forest are in full compliance with State water quality standards for the identified protected uses (Doc. 226, p. 19).
3. Regulation at 40 CFR 1508.27 directs that unique characteristics of the geographic area be considered, including proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas. The Responsible Official identified the unique characteristics of the area and included rationale why these characteristics would not be adversely affected by the selected alternative (Doc. 227, p. 13, Decision Notice/Finding of No Significant Impact).
4. The Responsible Official must consider the degree to which the effects on the quality of the human environment are likely to be highly controversial (40 CFR 1508.27(b)(4)). The Responsible Official states that no evidence has been presented that raises substantial

question as to the correctness of the environmental consequences that have been estimated (Doc. 227, p. 13, Decision Notice/Finding of No Significant Impact).

5. The Responsible Official states that this decision does not establish any precedent and that future proposals within the area can be analyzed on their own merits. This decision closes the Kanab Creek Allotment to livestock grazing, thus demonstrating that the Forest Service is not biased toward grazing where improvements have been made and livestock previously authorized
6. Regulation at 40 CFR 1508.27 directs the Responsible Official to consider the degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical unique characteristics of the geographic area be considered under the Endangered Species Act of 1973. The US Fish and Wildlife Service comment letter does not indicate significant effects.

Finding: The Responsible Official considered the effects of the selected alternative in the appropriate context. The Responsible Official appropriately found the effects on public safety, unique characteristics, and threatened and endangered species were not significant. The Responsible Official also appropriately found that the effects of the selected alternative are not highly controversial, and that the decision does not establish precedent for future actions having significant effects on the human environment.

ISSUE 3: The decision notice fails to adequately determine whether grazing is a suitable use of the lands in question in violation of the National Forest Management Act (NFMA).

Contention: The appellant contends that NFMA was violated, because there is no rational explanation of how or why the Forest Service determined that livestock grazing is considered suitable on all of these lands.

Response: NFMA does not require that a suitability analysis be conducted at the project level. On August 24, 1999, the United States Court of Appeals for the Ninth Circuit, in Wilderness Society v. Thomas, 188 F.3d 1130 (9th Cir. 1999), concluded the Forest Service complied with NFMA in adopting the Prescott Forest Plan, including the plan's allocation of acreage suitable for grazing. The forest plan complies with the requirements outlined in 36 CFR 219.20 through the analysis process applied in preparation of the forest plan (Kaibab 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. All requirements for suitability under the provisions of 36 CFR 219.20 were met upon completion of the forest plan. The 36 CFR 219 regulations are not applicable in this case.

ISSUE 4: The decision violates the NEPA and APA by failing to objectively evaluate alternatives.

Contention: The information in the environmental assessment and the project record shows that the no-grazing alternative is the highest-ranking alternative for achieving desired future condition.

Response: The environmental assessment objectively discloses the effects of each alternative. The Responsible Official chose Alternative 6 from the alternatives analyzed. The Responsible Official documented her decision rationale, relating it to the purpose and need for action.

Finding: The analysis is consistent with the Council on Environmental Quality regulations related to evaluating alternatives objectively. The decision is not arbitrary and capricious and does not violate the Administrative Procedures Act.

ISSUE 5: The Environmental Assessment makes ecological predictions contrary to science for the distribution of “weeds” and pinon-juniper ecosystems.

Contention: The appellant alleges that the decision concludes that “encroachment” of woody species into grassland would continue at the same pace in the no grazing alternative as in the proposed action, contrary to the best-available science. The appellant further alleges that, according to the literature, grazing is the primary cause of encroachment, that without grazing, natural fire would control woody species and range condition, and that grazing facilitates invasions by noxious weeds and cheatgrass. The appellant concludes that grazing will reverse or impede improvements in range condition that were gained by natural fire.

Response: Ecological science suggests that changes in plant community composition may have occurred due to a combination of climate, fire suppression, grazing, or other factors. Climate is the primary factor in the distribution of pinon-juniper ecosystems. The record indicates that the decision will result in improved range conditions.

Ecological condition – protection of the ecosystem from possible adverse effects of grazing – was a key issue in the EA (Kane Doc. 227, pp. 10-11). Impacts of the decision on “woody encroachment” were discussed in the record (Kane Doc No.159, pp. 10-11), the EA (Kane Doc No.277, p. 35), and in the response to comments (Kane Doc. 226, p. 3). The Responsible Official listed “noxious/invasive/exotic weeds” as a topic that needed attention in the EA (Kane Doc. 205, p. 1); however, the EA stated that cheatgrass was not a significant issue (Kane Doc. 177, Appendix C). Impacts of the decision on *weeds* and cheatgrass were discussed in the record (Kane Doc. 218, p. 1) the EA (Kane Doc. 177, pp. 20, 37, 40), and in the response to public comments (Kane Doc. 226, pp. 6-7, 21-23, 32). The BLM monitoring plan stated, “The goal of noxious weed treatment is complete eradication of noxious weeds.” (Kane Doc. 220, p. 9)

Finding: The effects of the decision on vegetation changes were discussed in the project record and the EA discloses the environmental impacts of the proposed action and the identified alternatives. The record indicates that the decision will result in improved range condition.

ISSUE 6: The EA does not fully examine impacts on listed and sensitive wildlife and plants.

Contention: The appellant contends that the effects on the Kaibab plains cactus are in violation of the Conservation Agreement and will continue outside of the spring growing season, during which cattle are excluded.

The appellant also contends that competition between deer and livestock for summer forage was ignored. Degradation of pronghorn habitat by cattle was not addressed and/or solved by the preferred alternative. Furthermore, extensive construction of livestock improvements only increases restriction of wildlife movement.

Response: The Conservation Agreement states that concerns over trampling of the Kaibab plains cactus by livestock have been resolved by changing the season of use (Doc. 110, p. 33, para. 3 and 4). This action (mitigation) was carried forward in the selected alternative.

Competition between deer and livestock for summer forage was addressed by the 1999 proposed action and, therefore, would not be an issue. The selected alternative (Alt. 6) also addresses summer forage competition. The record indicates that the nutritional value of forbs, browse plants, and grasses are very important to does preparing to fawn (Doc. 152). The environmental assessment states that the selected alternative would keep cattle on the Central Winter Allotment when the majority of deer would have moved to the Central Summer Allotment. Deer would be able to take advantage of the newly emergent forbs and browse without competition from livestock (EA, p. 46).

Potential effects of the preferred alternative on pronghorn and their habitat are disclosed in the Wildlife Section of the EA (Doc. 177, pp. 23-24). A letter from Arizona Game & Fish (Doc. 198) agrees that the proposed improvements will aid pronghorn movement and survival.

Finding: The requirements of the Conservation Agreement for the Kaibab plains cactus have been met. Livestock and mule deer competition on summer pastures was addressed by the proposed action and the selected alternative. The EA addresses the issues raised over pronghorn movement and survival, and includes solutions to these issues in the development of alternatives, and selection of a proposed action.

ISSUE 7: The EA does not construct a reasonable array of alternatives.

Contention: Appellant suggests several alternatives that should have been considered.

Response: "[A]n agency must look at every reasonable alternative, within the range dictated by the 'nature and scope of the proposed action' and 'sufficient to permit a reasoned choice.'" Idaho Conservation League v. Mumma, 956 F.2d 1508, 1520 (9th Cir. 1992). For an alternative to be reasonable, it must meet the stated purpose and need, and address one or more issues. The

formulation of alternatives is driven by significant issues identified in scoping (40 CFR 1501.2(c)).

The environmental assessment discusses one alternative that was considered and subsequently dropped from detailed study. The EA includes a ‘no-grazing’ alternative, a no change alternative, and four action alternatives, which were studied in detail.

The EA includes brief discussions of alternatives, as required by section 102(2)(E) of NEPA, which states, “Study, develop and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources.” The EA indicates that there were two issues identified as being significant to the proposed action (40 CFR 1501.7(a)(3)). The alternatives studied in detail meet the purpose and need for action and address the identified issues.

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

ISSUE 8: The environmental assessment fails to assess the environmental impacts of grazing on the BLM allotments.

Contention: The environmental assessment contains almost no information about the impacts of grazing on the BLM allotments.

Response: The environmental assessment discloses effects across the project area, on both BLM and Forest Service lands. For example:

- Vegetation effects discussion includes species such as the Brady pincushion cactus, which only occurs on BLM lands.
- Wildlife effects include pronghorn. Sixty percent of pronghorn habitat is on BLM lands.
- Impacts on recreation experiences include the Paria River and the River Pasture of the Lees Ferry allotment, both on BLM lands.
- Social and economic impacts are estimated from the combined ranching operation on both BLM and Forest Service lands.

The effects analysis is predicated on actions taken under both jurisdictions.

Finding: The environmental assessment’s disclosure of environmental effects on BLM lands is sufficient to provide a basis for choice among alternatives and to reach a finding of no significant impact.

ISSUE 9: The EA fails to assess the impacts of water diversion and water quality.

Contention: The appellant contends that a separate analysis of livestock and wildlife use should have been made for springs and the aquifers that support them.

Response: Water sources used by livestock and wildlife are identified throughout the project record (Doc. 17, Doc. 40, Doc. 41a, Doc. 63, Doc. 148). The preponderance of available water is provided by range improvements such as dirt tanks, trick tanks, guzzlers, cement aprons, and developed springs (Doc. 226, pp. 13, 35; Doc. 177, p. 23). Wildlife water use is considered in the disclosure of impacts for each alternative (Doc. 157). The decision recognizes the scarcity of natural water sources by providing for protection of naturally occurring lakes and exclusion of livestock from the Kanab Creek Allotment (Doc. 227, pp. 1-3). The summary of environmental effects in Doc. 157 shows that the selected alternative provides more dependable wildlife water than the no grazing alternative.

Finding: The provision of water for wildlife has been a priority throughout the planning process. The selected alternative considers the provision of wildlife water. There is no requirement to analyze specific increases or decreases of water by type of water source.

ISSUE 10: The EA fails to analyze economic impacts fully and fairly.

Contention: Appellant contends, “The economic analysis in the EA is unfairly distorted to create the appearance of a profitable livestock operation in Alternative 2, 4, and 6 (the selected alternative) when in fact the net income may be negative under all alternatives except for the ‘continue current management’ alternative.” Appellant references Tables 9 and 10 in the environmental assessment.

Response: The assumptions used in estimating the profitability of the ranching operation are documented. The environmental assessment states, “In this analysis of profitability, however, the results are a relative index of profitability of one action to another.” (EA, p. 56) The estimated costs and revenues provide a basis for alternative comparison only. The Decision Notice does not indicate that permittee profitability was a factor in the decision (Doc. 227).

Economic effects and permittee profitability are not, by themselves, considerations in determining whether or not to prepare an environmental impact statement (40 CFR 1508.14).

Finding: The environmental assessment discloses the assumptions used in estimating economic effects and qualifies the data as being used as a relative index. An appropriate economic analysis was conducted.

ISSUE 11: The utilization standards set by the decision notice for Central Winter Allotment exceed the limits set in the Kaibab Forest Plan as amended.

Contention: Appellant contends the utilization standards for Central Winter Allotment exceed the limits set in the 1996 amendment to Region 3 Forest Plans (Table 14, Kaibab Forest Plan). The appellant states that since the average range condition is between poor and very poor, average allowable use should be set below 20% for pastures on this allotment or at 5% on pastures with very poor condition range. The appellant assumes the grazing strategy is to defer

grazing on individual pastures one year in three. Without adjusting Table 14 based on site-specific information, allowable use on very poor condition range should be 5% and allowable use on poor condition range should be 15%.

Response: The record demonstrates that there are no entire pastures on the Kane Ranch Allotments that rate as very poor range condition, although the pastures tend to rate in poor condition, based on Parker 3-Step transects. Under Alternative 6 (Preferred Alternative) the grazing strategy is to rest pastures one year in three. The 20% standard selected by the Responsible Official was based on additional site-specific information and adjusted slightly to account for the upward trend on the Central Winter Allotment (Docs. 177, 226). The allowable use value assigned, the scheduled rest periods with the anticipated high deferment for warm and cool season species (70% and 95%, respectively) and the reduction in the length of time allocated to individual grazing allotments (change in season of use on the Central Winter Allotment **from** November 1 through May 31 **to** May 1 through July 14) are projected to lead to improved range conditions. Additionally, the Central Winter Allotment has been rested since 1996, following the Bridger Fire (Docs. 159, 177). A range of numbers has been established on the Central Winter Allotment with initial stocking (40% reduction from current stocking) set at the lower end of the range (Doc. 214). Ultimately, the numbers allowed to graze will be based on monitoring grazing use and improved management resulting from construction and reconstruction of range improvements (Doc. 227).

Finding: The guidelines in Table 14 of the Kaibab Forest Plan are to be applied in the absence of more specific guidelines established through site-specific NEPA analysis for individual allotments. The Responsible Official selected a utilization standard based on additional site-specific information. The Responsible Official's decision is consistent with the Forest Plan.

ISSUE 12: The decision violates Mexican Spotted Owl management direction.

Contention: Appellant contends that reintroduction of livestock to this allotment is clearly a violation of the Forest Plan's prescription to "strive to attain good to excellent range conditions."

Response: Despite years of survey, there are no known Mexican spotted owls on this allotment. Consultation on effects to habitat was completed and the US Fish and Wildlife Service concurred with a determination of "May Affect – Not Likely Adversely Affect". The appellant believes that "to strive to attain good to excellent range conditions" is a prescription. It is, in fact, a goal and goals are reached by incremental progress.

Finding: The decision does not violate Mexican spotted owl direction, as presented by the appellant.

ISSUE 13: The decision violates the Kaibab Cactus Conservation Agreement.

Contention: The appellant contends that Kaibab Cactus Conservation Agreement limits the number of cattle on the Kane Allotment to a maximum of 441 at any one time. The EA proposes

up to 1,190 cattle, which violates the agreement and counters Kaibab Forest Plan direction to improve habitats for listed, threatened, endangered, and sensitive species.

Response: The statement on page 25 of the Conservation Agreement (Doc. 110) concerning the 441 head refers only to the management of the allotment at the time the Conservation Agreement was signed. It does not refer to an agreed upon maximum stocking level for the allotment. The Conservation Agreement further states that concerns over trampling of the Kaibab plains cactus by livestock have been resolved by changing the season of use (Doc. 110, p. 33, para. 3 and 4). This action (mitigation) was carried forward in the selected alternative.

A thorough discussion of the potential effects of the proposed action on the Kaibab plains cactus and how it fits within the context of the Conservation Agreement is presented in the Plant BA&E (Doc. 224).

Finding: The Conservation Agreement for the Kaibab plains cactus has not been violated.