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Department of  
Agriculture

Forest  
Service

Southwestern  
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File Code:1570-1/2200

Date: June 27, 2001

Kirsten Stade  
Forest Guardians  
1411 Second Street  
Santa Fe, NM 8750505

**CERTIFIED MAIL -  
RETURN RECEIPT REQUESTED**  
7099 3220 0000 8709 9870

Re: Appeal #01-03-00-0029-A215, Kane Ranch Allotment Decision, North Kaibab Ranger District, Kaibab National Forest

Dear Ms. Stade:

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 Kane Ranch 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

## Forest Guardians' Appeal

## #01-03-00-0029-A215, Kane Ranch Allotment Decision

**ISSUE 1:** The Forest Service violated NFMA by continuing to allow cattle grazing on the allotment without first evaluating the allotment's suitability for grazing. Therefore, the choice of any alternative is premature.

**Contention:** The appellant contends that NFMA was violated because the Responsible Official failed to evaluate the allotment's suitability for grazing, "...the Forest Service must determine in forest planning the suitability and potential capability of the National Forest System lands... 36 CFR, Sec. [3]19.20." Absent a suitability analysis, the appellant contends that the Forest Service failed to discharge its obligation under NFMA to take a hard look at each alternative and therefore, the decision is premature.

**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 therefore the decision is not premature.

**ISSUE 2:** The decision violates the Kaibab National Forest Plan and the Regional Guide by failing to manage riparian areas to achieve recovery.

**Contention:** The Forest Service's decision fails to ensure that riparian areas on the allotment will recover to satisfactory condition by the year 2015, as required by the forest plan.

**Response:** The environmental assessment indicates that the selected alternative would exclude cattle from North Canyon (the only running water in the project area), as well as, the vegetation around natural lakes (EA, pp. 44, 46; Doc. 152). Some lakes needed for livestock water would have ¼ to 1/3 of their shorelines open to livestock. The EA effects analysis indicates the selected alternative would allow recovery of riparian vegetation.

**Finding:** Continued riparian improvement is ensured under this decision, and there is no violation of the Kaibab National Forest Plan.

**ISSUE 3:** The decision violates the NFMA's requirement to maintain viable numbers of all species.

**Contention:** The appellant contends that the Forest Service must manage sensitive species to sustain viability and prevent the need for listing. In addition, the Forest Service must manage (fish and wildlife habitat) to maintain viable numbers. The appellant points to the lack of management for riparian habitat, and that the Forest Service must provide protection for riparian obligate species; "In particular we believe that domestic livestock production in the watershed threatens the viability of the Southwestern willow flycatcher, the Bell's vireo, the Yellow-billed cuckoo, the Black hawk, the Mexican spotted owl, the Mexican garter snake, the Narrow-headed garter snake, the Chiricahua leopard frog, the Yavapai leopard frog, the Arizona southwestern toad, and the Lowland leopard frog."

**Response:** The EA (Doc. 177) analyzed the effects to federally listed species, Management Indicator Species (MIS), and Region 3 Sensitive species on the allotment. The Bell's vireo, yellow-billed cuckoo, Mexican garter snake, Chiricahua leopard frog, Yavapai leopard frog, Arizona southwestern toad, and lowland leopard frog are not found in this area.

There is no occupied, unoccupied suitable, or potential habitat for Southwestern willow flycatcher on the allotment (Doc. 134a). A determination of "May Affect – NLAA" was concurred on, based on habitat found off the allotment but within the Grand Canyon.

There are no known Mexican spotted owl territories on the Kane Allotment, although considerable effort has been expended in surveys for MSO on the north rim of the Grand Canyon. A determination of "No Effect" was concluded (Doc. 134a).

A determination of "May Affect – NLAA" was concluded for the California condor.

The proposed action "may impact" individuals of: peregrine falcon, northern goshawk, sharp-shinned hawk, Swainson's hawk, Townsend's big-eared bat, spotted bat, western mastiff bat, other forest bats, but will not result in a trend toward federal listing.

Because the proposed action maintains habitat quantity or quality for the species analyzed, this action should not reduce the viability of these species.

**Finding:** Review of the process record finds no evidence that the proposed action will reduce the viability of any of the species identified by the appellant, and/or MIS, game, ESA listed or Sensitive Species found in the area. The analysis presented in the EA, and supporting BAEs, specialist reports, and associated documentation concludes that habitat quantity and quality for the species analyzed will be maintained, and their viability for the foreseeable future assured.

**ISSUE 4:** The Kane Ranch term permit issuance must be suspended until the Kaibab National Forest revises its land and resource management plan and until the Forest Service develops a renewable resources program.

**Contention:** The appellant contends, “... there is no legally adequate RPA program or land and resource management plan to which the Kane Ranch grazing term permit reissuance project can be tiered.”

**Response:** There are no statutes or regulations that describe an expiration date for the Forest Service Renewable Resource Program or Land and Resource Management Plans. The Kaibab Land and Resource Management Plan will remain in effect until it is revised, consistent with the requirements of the National Forest Management Act and implementing regulations.

**Finding:** The current plan is in effect until the revision process is completed. There are no requirements to suspend activities until the process is completed.

**ISSUE 5:** The Forest Service violated NEPA by failing to analyze a reasonable range of alternatives.

**Contention:** The appellant contends that a range of reasonable alternatives, as required by NEPA implementing regulations, was not analyzed.

**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 Kane Ranch Allotment Management Environmental Assessment includes five action alternatives, one of which was dropped from detailed study. Scoping identified two issues that were significant to the proposed action (EA, p. 5). The action alternatives address these issues and provide an appropriate range.

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

**ISSUE 6:** The Forest Service violated NEPA by failing to consider and disclose the cumulative impacts of the proposed action.

**Contention:** The appellant contends that the cumulative effects of the alternatives were not adequately addressed, considering past, present, and reasonably foreseeable activities, as required by NEPA. Appellant states, “...the EA contains virtually no analysis of cumulative effects...”

**Response:** The environmental assessment discloses cumulative effects on vegetation, watershed, and range condition (EA, pp. 40-42); wildlife and threatened and endangered plants (EA, pp. 49-51); recreation and associated resources (EA, p. 54); air quality (EA, p. 65); and social and economic cumulative effects (pp. 64-65).

**Finding:** The record includes consideration of past, present, and reasonably foreseeable future actions and their cumulative effects on the components of the human environment. The cumulative effects analysis is adequate for an informed decision and for the purpose of determining significance and whether or not an EIS is needed.

**ISSUE 7:** The EA violates the Clean Water Act.

**Contention:** The appellant contends that Forest Service failed to require the permittee to provide certification from the state of Arizona, as required under Section 401 of the Clean Water Act (CWA).

**Response:** The State of Arizona does not require water quality certification for dispersed non-point activities such as livestock grazing. However, the record shows that the appropriate non-point source pollution considerations were made during the planning process. The Arizona Department of Environmental Quality was consulted during the scoping, alternative development and EA comment phases (Doc. 12, Doc. 176, Doc. 199). 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), and a riparian survey done in 1990 shows the riparian resources in good condition (Doc. 226, p. 16). The decision provides protection for natural water sources by providing for the fencing of naturally occurring lakes and the exclusion of livestock from three valley bottoms. (Doc. 227, pp. 1-3). The project record also contains a complete list of BMP's selected for this project (Doc. 219; Doc 227, p. 5)

**Finding:** Appropriate procedures were followed and adequate mitigation is planned for the project area. There will be no violation of the Clean Water Act.

**ISSUE 8:** The decision violates the Multiple Use and Sustained Yield Act.

**Contention:** The appellant alleges that the decision violates the Multiple Use and Sustained Yield Act by failing to manage for the highest public benefit. The appellant further alleges that the decision will continue to impair land productivity.

**Response:** Management of National Forest Lands for the highest net public benefits was analyzed and decided upon in the preparation of the forest plan. The forest plan provides direction for management emphasis within the project area. Net public benefits were analyzed appropriately during forest plan preparation and are outside the scope of project-level analysis.

The environmental assessment's effects disclosure relative to range resource value ratings, vegetative conditions, and watershed conditions indicate the selected alternative will improve land productivity (EA, pp. 34-36, 39).

**Finding:** This decision will improve land productivity and is, therefore, consistent with the Multiple Use and Sustained Yield Act.

**ISSUE 9:** 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 admitted problems on the allotments are identified in the environmental assessment's Purpose and Need for Action discussion:

- Unsatisfactory riparian conditions
- Conflicts between recreationists and livestock
- Damaged rock art in Snake Gulch
- Potential competition with deer for browse
- No coordinated management plan between Bureau of Land Management, Forest Service and permittee

The environmental assessment effects disclosure and the Responsible Official's decision rationale both document that the selected alternative will remedy the identified problems.

**Finding:** The Responsible Official made reasoned and informed decisions based on the analysis and has not violated the Administrative Procedures Act.