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Forest
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Date: November 27, 2001

Kirsten Stade
Forest Guardians
3112 Montezuma, Suite A
Santa Fe, NM 87501

**CERTIFIED MAIL -
RETURN RECEIPT REQUESTED**
7000 2870 0000 1135 8934

RE: Appeal #02-03-00-0002-A215, Government Mountain Allotment Decision, Williams
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 above-named allotment.

BACKGROUND

District Ranger Skalski issued a decision on August 24, 2001, for the Government Mountain Allotment. The decision resulted in the selection of the following alternative and authorization:

- Government Mountain Allotment, Alternative 2, which authorizes 600 head of yearling cattle to graze May 15 through September 30 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.



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/ Bob Leaverton, for
JAMES T. GLADEN
Appeal Deciding Officer,
Deputy Regional Forester,
Resources

Enclosure

REVIEW AND FINDINGS

of the

Forest Guardians Appeal**#02-03-00-0002-A215, Government Mountain 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, stating, "...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 that, 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 appellant asserts that the decision fails to make the health of riparian areas a priority and in so doing violates both the Forest Plan and Regional Guide.

Response: The Regional Guide facilitated Forest Plan development. Requirements in the Regional Guide are reflected in the Forest Plan. There is no requirement for project-level compliance with Regional Guides.

The EA discloses that there are no riparian areas within the allotment (EA, Doc. 73, pp. 18, 28). Thus, this issue is not relevant to this allotment management project.

Finding: There is no violation of the Kaibab National Forest Plan or the Regional Guide.

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

Contention: The appellant believes that continued livestock grazing along riparian habitats threatens the viability of numerous riparian obligate species, which include federally listed, Regional Forester sensitive, and Forest Plan management indicator species. In particular, the appellant believes that domestic livestock production in the watershed threatens the viability of the Southwestern willow flycatcher, the black hawk, the Mexican spotted owl, the Mexican garter snake, the narrow-headed garter snake, the Chiricahua leopard frog, and the Arizona southwestern toad. Only the cessation of grazing in these watersheds, combined with active restoration work, will adequately provide for the minimum habitat needs of these species.

Response: The Forest identified there are no wetlands or perennial streams, and thus no riparian habitat, within this allotment (AR 43, 47, 73). In addition, the Government Mountain Allotment is outside the range of most of the species of concern to the appellant, including the black hawk, Mexican garter snake, narrow-headed garter snake, Chiricahua leopard frog, and Southwestern toad. No habitat for the Southwestern willow flycatcher exists within the allotment. Two Mexican spotted owl protected activity centers (PAC) are located in the Kendrick Mountain Wilderness in the northern portion of the allotment. The light grazing currently occurring in this portion of the allotment, which would continue under the proposed action, is well within the MSO foraging guidelines (AR 43, 50, 73).

A biological assessment and evaluation prepared by the Forest made *no effect* or *not likely to adversely affect* determinations for all federally listed and Regional Forester sensitive species analyzed for this project. These determinations, by definition, indicate the Forest does not expect the viability of listed species to be affected by the proposed action (AR 43, 50, 73).

Finding: Review of the appeal record finds no evidence that the proposed action will reduce the viability of any of the species identified by the appellant, or any other MIS, game, Regional Forester sensitive, or federally listed species analyzed in the EA. The proposed action maintains or improves habitat quantity and/or quality for the species analyzed.

ISSUE 4: The decision violates NFMA consistency and viability provisions by failing to adequately protect the Northern goshawk.

Contention: The allotment provides nesting or potential habitat for the Northern goshawk, yet fails to establish key foraging areas that limit utilization to an average of 20% and a maximum of 40%.

Response: One Northern goshawk territory is found within the northern portion of the allotment (AR 43, 47, 50, 73, 79). The light grazing currently occurring in this portion of the allotment, which would continue under the proposed action, is well within the goshawk foraging guidelines (AR 43, 50, 73).

Finding: The decision is consistent with NFMA consistency and viability provisions for the Northern goshawk.

ISSUE 5: The Government Mountain 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 Government Mountain term grazing permit issuance 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 6: 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 must address one or more issues. The formulation of alternatives is driven by significant issues identified in scoping 40 CFR 1501.2(c).

The EA clearly defines the nature and scope of the proposed action and alternatives to the proposed action, through descriptions of the purpose and need, objectives, desired conditions, decision to be made, and significant issues (Doc. 73, pp. 4-8). The range of alternatives is consistent with that defined scope (Doc. 73, p. 9).

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

ISSUE 7: The Forest Service violated NEPA, because the EA fails to consider and disclose adequately the location and protocol for monitoring key forage utilization areas within the allotment.

Contention: The appellant contends the EA must disclose the names, locations, forage utilization limits, and monitoring protocol for each and every key area within the allotment.

Response: The record demonstrates that utilization levels on the Government Mountain Allotment will be 35 percent (Docs. 73, 74). Proper forage utilization standards are employed to sustain such things as plant health and vigor, long-term soil productivity, and protection for threatened, endangered, and sensitive species and their habitats. Forage utilization levels are determined based on guidelines set out in the R-3 Allotment Analysis Handbook (FSH 2209.21). This handbook specifically describes appropriate forage utilization levels recommended for the purpose of improving rangeland condition. These guidelines have been developed by Southwestern Region Rangeland Management Specialists, Ecologists, and other scientists over a period of 50 years.

Forage utilization is measured by key area on key forage species within various pastures encompassing a grazing allotment. Key areas are locations readily accessible to water and forage and are located on level to intermediate slopes. Key species are herbaceous and woody vegetation that domestic livestock prefer at any given time of the year. By monitoring key areas, the Forest Service can ensure that an allotment, or pastures within an allotment, is not overgrazed.

The purpose of an environmental assessment is to disclose the environmental effects of a Federal action and make a determination whether the effects rise to the threshold that trigger the requirement to do an environmental impact statement. Establishing and monitoring forage utilization standards ensures that grazing will not have a significant effect on the environment. The effects of grazing on other resources have been disclosed in the environmental assessment.

Finding: The Responsible Official has met the requirement of NEPA, which is to disclose the effects of the proposed action on the human environment. There is nothing in federal statutes, regulations, or Forest Service policy that requires the Responsible Official to disclose the names and locations of each and every key area within an allotment in an EA. As the selected alternative is implemented all monitoring information will be available to the public.

ISSUE 8: 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 EA describes the past, present, and reasonably foreseeable actions within and surrounding the allotment that could be possible contributors to cumulative effects (Doc. 73, pp. 19, 24-25, 37-38, 45-46, 48). The EA and Finding of No Significant Impact disclose that effects of the selected alternative combined with effects of other actions would not cause any significant cumulative impacts (Doc. 73, 19, 25, 38, 46, 48, 50; Doc. 74, p. 7).

Finding: The record includes consideration of past, present, and reasonably foreseeable actions and their cumulative effects on the components of the human environment. The cumulative effects analysis is adequate for an informed decision and determining whether an EIS is needed.

ISSUE 9: The EA violates the Clean Water Act.

Contention: The appellant argues that the Forest Service failed to obtain water quality certification from the state of Arizona for this project, as required under Section 401 of the Clean Water Act.

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, which include Best Management Practices (BMPs), were made during the planning process (Doc. 73, pp. 15-16). The project record also shows the Arizona Department of Environmental Quality (ADEQ) (Docs. 18 and 56) was consulted and provided input (Docs. 22 and 62) during the project scoping and planning phases. In their comments to the EA, ADEQ stated, "...the proposed activities do not appear to represent a serious threat to the quality of the water resources..." (Doc. 62). In addition, the alternative selected will have a positive effect on improving ground cover and reducing erosion (Doc. 74).

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 10: 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 Kaibab National 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 EA and Decision Notice describe how the selected alternative is expected to reduce erosion and water runoff, improve watershed conditions, and provide for a continued upward trend in soil and vegetative conditions, with no negative impacts to soil productivity (Doc. 73, pp. 13, 18-20; Doc. 74, pp. 2, 5, 9; and Doc. 46).

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

ISSUE 11: 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 EA discloses that, despite generally good conditions on the allotment, there are localized areas of over-use due to problems with livestock distribution and limited water availability (Doc. 73, pp. 6-8). The EA and Decision Notice clearly describe how the selected alternative will remedy that situation by reducing cattle numbers, adding new water sources, and repairing damaged water sources (Doc. 73, pp. 4-7, 18, 22-23; Doc. 74, pp. 2-5).

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