



United States
Department of
Agriculture

Forest
Service

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File Code: 1570-1/2200

Date: August 15, 2001

Jeff Burgess
1920 E. Orion Street
Tempe, AZ 85283

**CERTIFIED MAIL -
RETURN RECEIPT REQUESTED**

Re: Appeal #01-03-00-0035-A215, Long Gulch Allotment Decision, Verde Ranger District,
Prescott National Forest

Dear Mr. Burgess:

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 Bonomo issued a decision on May 14, 2001. The decision resulted in the selection of the following alternative and authorization:

Long Gulch Allotment, Alternative 2, which authorizes 200 head of cattle, (cow/calf) to graze yearlong, with a variable numbers clause in the term grazing permit to allow movement of cattle between the Long Gulch Allotment and the Box Bar Allotment. The Bureau of Land Management administers the Box Bar Allotment.

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 Long Gulch 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/James T. Gladen
JAMES T. GLADEN
Appeal Deciding Officer
Deputy Regional Forester

Enclosure

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

REVIEW AND FINDINGS

of the

Jeff Burgess Appeal

#01-03-00-0035-A215, Long Gulch Allotment Decision

ISSUE 1: The decision fails to comply with the National Environmental Policy Act (NEPA), because the Long Gulch Grazing Allotment Environmental Assessment (EA) failed to describe the no-action alternative accurately.

Contention: The appellant asserts that the *no grazing* alternative is incorrectly labeled as *no action*, thereby violating the National Environmental Policy Act. The appellant further asserts that since this alternative would result in a big change from the current situation, it cannot be a *no action* alternative, and that the proposed *current management* should be labeled the *no action* alternative.

Response: The Long Gulch Livestock Grazing Environmental Assessment includes a no grazing alternative labeled “no action” (EA, p. 3). The proposed action precipitating this analysis is to authorize livestock grazing on the Long Gulch Allotment. The appellant interprets this proposed authorization as an ongoing program that will continue even as new plans are developed, referencing the Council on Environmental Quality *Forty Most Asked Questions*. The existing and proposed authorizations are for ten-year periods, with explicit expiration dates, not ongoing programs.

The current situation involves a ten-year term permit authorizing livestock grazing on the Long Gulch Allotment, which expires in 2001. If the Responsible Official had decided to not authorize livestock grazing on the Long Gulch Allotment, the current authorization would be allowed to expire in 2001 without any action from the Forest Service. An agency decision to take no action does not necessarily mean that no changes will occur as a result of not taking action.

The foregoing argument aside, the alternative that the appellant asserts should be labeled as no action was considered, and the anticipated effects are documented in the environmental assessment. The Council on Environmental Quality regulation at 40 CFR 1508.9 contains no formatting requirements for environmental assessments or how each alternative should be labeled.

Finding: There are no formatting or alternative labeling requirements for environmental assessments. There is no requirement that a decision to take no action cannot result in any change on the ground. Based on the proposed action, the Responsible Official correctly identified the no action alternative in the environmental assessment. The decision complies with NEPA as it relates to consideration of a no action alternative.

ISSUE 2: The decision fails to comply with NEPA, because the EA failed to analyze a sufficient number of alternatives.

Contention: The appellant contends that by analyzing only one alternative to the proposed action, the Responsible Official has not analyzed a sufficient number of alternatives.

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 interdisciplinary team reviewed seven public comments during scoping and found no issues significant to the proposed action. The environmental assessment documents consideration of four action alternatives that were dropped from detailed study. One action alternative and the no action alternative were carried through the analysis. As there were no significant issues to drive formulation of alternatives, the alternatives considered constitute an appropriate range.

Finding: The Responsible Official appropriately defined the scope of the analyses and analyzed a range of reasonable alternatives within that scope. The decision complies with NEPA as it relates to the number of alternatives.

ISSUE 3: The decision fails to comply with NEPA, because the EA did not include essential information.

Contention: The appellant alleges that the environmental assessment does not include: information concerning the presence of Gila chub in Upper Water Spring, on Indian Creek; the need for an enclosure around Upper Water Spring; and quantified similarity of current conditions to potential vegetation. Based on a response to an Arizona Game and Fish Department comment (DC-3, Comment 9) the appellant questions the accuracy of the environmental assessment's conclusion that riparian areas are in properly functioning condition.

Response: Upper Water Spring is upstream and over a mile outside the Long Gulch Allotment. It is not within the scope of the analysis or part of the environment affected by the proposed action.

The similarity of current conditions to potential vegetation is summarized in the environmental assessment (EA, pp. 8-10). The environmental assessment references document VSW10, which contains a detailed comparison between TES potential vegetation and current conditions.

The record includes a response to an Arizona Game and Fish Department comment (DC-3, Comment 9), which states, "... we will work with the Department on Middle Water." The response also states a need to improve management of Upper Water and Middle Water springs.

The environmental assessment indicates that riparian areas are already in proper functioning condition and that little change is expected from either alternative (EA, p. 10, VSW 9). Evidence of light livestock use was observed around Middle Water Spring in field surveys for the Wildlife, Fish, and Rare Plant Habitat Assessment (WDL 3).

The record does not identify any need for a riparian enclosure at Middle Water Spring. The selected alternative does not include any new range facilities (EA, p. 4, and Decision Notice, p. 1). Any riparian enclosure at Middle Water Spring is outside the decision under review.

Finding: The environmental assessment's effects analysis is adequate for an informed decision and for the purpose of determining significance and whether an EIS is needed. The environmental assessment complies with NEPA.

ISSUE 4: The decision fails to comply with Forest Service Manual, Chapter 2200, Range Management Planning, Region 3 Supplement 91-1.

Contention 4a: The appellant contends the Responsible Official failed to comply with FSM 2210 (Policy), R-3 Supplement 2200-91-1, that states "Allotment management planning will consider the grazing use of all lands involved in the livestock operations of the grazing permittees."

Response: The appellant is correct in terms of citing the Region 3 supplement at FSM 2210. However, the operative phrase in the policy statement is "will consider." This does not imply the Forest Service is automatically required to enter into coordinated resource management planning (CRM). It does, however, provide a forum for coordination where it is determined to be essential to the development and implementation of a sound resource management plan. When CRM is determined to be desirable, it is carried out in accordance with a Memorandum of Understanding for CRM in Arizona between 20 State and Federal Agencies. The record reflects that the Responsible Official did consider this policy before limiting the scope of the analysis to National Forest System Lands (EA, Introduction). Additionally, the Responsible Official's decision provides for a variable numbers clause, in the term grazing permit, to allow for movement of cattle between the Long Gulch Allotment and the Box Bar Allotment. The Bureau of Land Management administers the Box Bar Allotment. Finally, the record reflects that monitoring data indicates the current management system (proposed action) has been in place since 1992, and is meeting resource management objectives (Doc. RGE 2).

Finding: The Responsible Official appropriately considered the scope of the analysis.

Contention 4b: The appellant contends the decision should allow for carryover forage for years of low precipitation.

Response: Rangeland management is an ongoing adaptive process where short and long-term monitoring provides the Responsible Official with information necessary to respond to changing conditions. The record reflects key areas. Key species have been identified and will be monitored annually to determine when forage utilization standards have been reached (Doc. BM 2). This will trigger corrective action to ensure livestock are moved to the next pasture in the rotation or off the allotment, as appropriate, to ensure protection of soil and water resources and provide adequate food and cover requirements for wildlife (Doc. BM 1). Additionally, the Responsible Official has the discretion under the terms and conditions of the term grazing permit to adjust stocking, on an annual basis, to respond to the issue the appellant raises. The record reflects that actual use has varied from a high of 425 to a low of 280 cattle for an average of 6 months (140 to 213 cattle yearlong) since the current management system was implemented in 1992 (Environmental Assessment; Decision Notice, Appendix 4).

Finding: Mechanisms are in place to respond to years of low precipitation.

ISSUE 5: The decision fails to comply with 36 CFR 215.6(d).

Contention: The appellant contends his questions about the affects of the proposed forage use rates, upon the quality of local quail habitat, were ignored.

Response: The purpose of the notice and comment provisions found at 36 CFR 215.5 is to provide persons expressing an interest in a proposed federal action the opportunity to submit specific facts along with supporting reasons that the commenter believes the Responsible Official should consider in reaching a decision. A review of the record documents that the Responsible Official did respond to the appellant's substantive comments. While the record also demonstrates the appellant disagrees with the Responsible Official's responses, this does not constitute a violation of the requirements found at 36 CFR 215.6. The record reflects the Responsible Official did respond to the appellant's contention that "the high forage utilization levels could be negatively impacting the quality of local wildlife habitat" (Docs. C1; DC1).

Finding: The Responsible Official adequately responded to the appellant's comments as provided for at 36 CFR 215.6.