



File Code: 1570-1

Date: August 15, 2001

Kirsten Stade
Forest Guardians
1411 Second Street
Santa Fe, NM 87505

**CERTIFIED MAIL -
RETURN RECEIPT REQUESTED**

Re: Appeal #01-03-00-0034-A215, Long Gulch Allotment Decision, Verde Ranger District,
Prescott 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 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

Forest Guardians' Appeal

#01-03-00-0034-A215, Long Gulch 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 (Prescott 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 Prescott 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 Prescott National Forest Plan sets standards for 80% of riparian areas to be achieved by 2030. The standards call for riparian vegetation structure and composition to provide for proper functioning condition. The record includes a definition of proper functioning condition at VSW 11. 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).

Finding: The decision is consistent with the Prescott Forest Plan with respect to riparian standards and guidelines.

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

Contention: The appellant contends 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 perceived 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 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”.

Response: Suitable habitat (for four of the seven species identified by the appellant) does not exist near or within the allotment. Only habitat for the black hawk, Mexican garter snake, and Arizona southwestern toad is known to be present within the allotment. The District analyzed the effects each alternative would have on Federally listed, Regional Forester Sensitive, and Management Indicator Species (MIS). Through this analysis, it was determined the proposed action may impact individuals of the three species identified above; but it is not likely this action would result in a loss of viability for these species or result in a trend toward federal listing. (AR WDL 4, 5, 6 and 7)

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 or ESA listed species, analyzed in the EA. The proposed action maintains 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: This allotment does not contain suitable habitat for the Northern goshawk (AR WDL 7).

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

ISSUE 5: The Long Gulch term permit issuance must be suspended until the Prescott 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 Long Gulch 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 Prescott 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 was not analyzed, as required by NEPA implementing regulations.

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 considered 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.

ISSUE 7: The Forest Service violated NEPA by failing to consider and disclose the location and protocol for monitoring key forage utilization areas.

Contention: The appellant contends that since monitoring is such a critical aspect, the details of monitoring must be disclosed.

Response: Both the decision notice and the environmental assessment, document the utilization standards to be applied: 40 percent on grama and tobosa grasses during the growing season and 50 percent during the dormant season, 30 percent on browse species, and 20 percent on riparian vegetation. Key areas and corresponding utilization standards are documented in the record. Additionally, trend plots will be established in conjunction with key areas. These plots will be read when they are established one year later and then every five years (Doc. BM2).

Finding: The Responsible Official adequately provided for monitoring of grazing use in the analysis and subsequent decision.

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 environmental assessment documents consideration of past, present, and reasonably foreseeable actions. Actions considered include: urban development, livestock grazing, prescribed burning, juniper thinning, and recreational activities. These actions were considered with respect to their potential to contribute cumulatively to effects on soil, vegetation, wildlife, water, air, and people (EA pp. 12-13).

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 for the purpose of determining significance and whether an EIS is needed.

ISSUE 9: The EA violates the Clean Water Act.

Contention: The appellant contends that the Forest Service failed to obtain water quality certification from the state of Arizona for Long Gulch Allotment, 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 (EA, p.12, DN, BM 1).

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 benefit 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.

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 environmental assessment identifies four needs (problems) on the allotment: the current permit will expire in 2001, site distance in the antelope corridor is restricted, fences may impede antelope movement due to the lack of a smooth bottom wire, and water tanks and troughs do not have small animal escape ramps. The environmental assessment and decision notice indicate that these problems are resolved by the selected alternative.

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