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File Code: 1570-1/2200
Date: August 15, 2001

Jim Powers
P.O. Box 10642
Prescott, AZ 86304

CERTIFIED MAIL -
RETURN RECEIPT REQUESTED

Re: Appeal #01-03-00-0037-A215, Long Gulch Allotment Decision, Verde Ranger District, Prescott National Forest

Dear Mr. Powers:

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.

Throughout your appeal, you have asked numerous questions about the use of soils and vegetation condition information and, in general, question the validity of the NEPA analysis and interpretation applied to resource information. This appeal is essentially an audit of the analysis process, the Environmental Assessment, and the process record. The appeal does not clearly state issues. The appeal review process is not the forum for responding to specific questions about how to conduct a NEPA analysis or explain the basis for interpretations and conclusions of resource professionals. Therefore, the enclosed Technical Review and Findings is organized around four broad issues gleaned from your appeal.

My role as the Appeal Deciding Officer is to evaluate the decision to determine whether the Responsible Official conducted an appropriate analysis, reached reasonable conclusions and complied with federal law, regulation and policy, based on the project 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

Jim Powers Appeal

#01-03-00-0037-A215, Long Gulch Allotment Decision

ISSUE 1: The interdisciplinary team has not conducted the Environmental Analysis of the Long Gulch Allotment in accordance with the requirements of NEPA, the Forest Service Manual, and the Prescott National Forest Land Management Plan.

Contention: The appellant contends there were misinterpretation, misrepresentation and misuse of the Terrestrial Ecosystem Survey (TES) methodology in evaluating the impacts of livestock grazing and that soil condition was not given proper consideration in any environmental analysis.

Response: The Terrestrial Ecosystem Survey report for the Prescott National Forest is cited and referenced in the project record and environmental assessment. A review of the record shows that the analysis involved the reformatting of the TES data into range sites. This approach utilizes an established process of organizing information on predicting the response to the effects of grazing on soil and vegetation resources. The project record contains an outline of the data analysis and results. Soil condition interpretations are predicted in the TES report, whereas actual site-specific conditions may vary. Validation of actual conditions was performed and documentation is contained in the project record. Although the differences in soil conditions between data sets from TES and on-site investigations for this assessment are unexplained, the information was collected by experienced professionals who are familiar with past management of these resources, using standard protocols, in a recent timeframe. This does not constitute misuse or misinterpretation.

The project record also contains documentation quantifying vegetative ground cover and observations regarding gully erosion and soil compaction, that support the satisfactory soil condition ratings. Satisfactory soils typically do not become an issue unless changes in management pose a risk to its function. The project record and environmental assessment state that some small areas of impaired soil condition could benefit from improved vegetation ground cover. Therefore, appropriate consideration was given to the soil resource.

Finding: The Responsible Official did not misinterpret, misrepresent or misuse the Terrestrial Ecosystem Survey (TES) methodology in evaluating the impacts of livestock grazing on the Long Gulch Allotment.

ISSUE 2: National Environmental Policy Act (NEPA)

Contention: Appellant raises a series of procedural issues concerning the environmental analysis and decision:

- Disagreement with Responsible Official's rationale for decision
- Lack of public involvement
- Lack of significant issues
- Inadequate range of alternatives
- Incomplete effects analysis

Response: Forest Service policy requires the Responsible Official to provide decision rationale in the decision notice (FSH 1909.15, Sec. 43.21). The decision notice includes the Responsible Official's rationale for choosing the selected alternative. The Responsible Official's rationale appropriately includes his interpretations of effects, disclosed in the environmental assessment, and the conclusions he derived from them.

Forest Service policy requires the Responsible Official to ensure that an appropriate level of scoping occurs (FSH 1909.15, Sec. 10.4). Because the nature and complexity of a proposed action determine the scope and intensity of the required analysis, no single technique is required or prescribed (FSH 1909.15, Sec. 11). The Responsible Official is within his discretion in choosing to rely on the results of previous public comments for scoping.

Regulation at 40 CFR 1501.7, Scoping, [which the Forest Service applies to all proposed actions (FSH 1909.15, Sec. 11)] directs identification and elimination from detailed study issues that are not significant to the proposed action. For an issue to be considered significant, it must be: within the scope of the analysis; not decided by law, regulation or policy; related to the decision; and amenable to scientific analysis rather than conjecture. The record indicates that the interdisciplinary team reviewed public comments during scoping and found no issues significant to the proposed action (SCOP 11).

"[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 the 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.

The environmental assessment documents the analysis of direct, indirect, and cumulative effects on soil, vegetation, wildlife, water, air, and people (EA, pp. 12-13). The effects analysis is adequate for an informed decision and for the purpose of determining significance and whether an EIS is needed.

Finding: The Responsible Official complied with NEPA, its implementing regulations, and Forest Service environmental policy.

ISSUE 3: Forest Plan Consistency

Contention: The appellant raises issues concerning the consistency with the Prescott Forest Plan:

- Inconsistency with forest plan direction to "Determine range suitability on a site-specific basis
- Inconsistency with forest plan goals

Response: The court has established that land suitability for livestock grazing was determined during the Prescott's forest planning process, Wilderness Society, et al. v Thomas, 188 F.3d 1130 (9th Cir., 1999). Grazing suitability determinations are not required during project planning. The Prescott Forest Plan unfortunately misapplies the term *suitability*.

Forest plan goals describe a desired condition to be achieved sometime in the future. Forest plan management prescriptions, including standards and guidelines, are designed to achieve forest plan goals. The record indicates that the decision implements forest plan prescriptions for Management Areas 5 and 6 (CFA1, CFA2).

Finding: The Responsible Official's decision is consistent with the Prescott Forest Plan.

ISSUE 4: Appeal Rights

Contention: Appellant raises issues concerning the appeal regulations:

- Disagreement with responses to public comments
- Lack of opportunity for oral presentation

Response: Comments afforded the public under the appeal regulation at 36 CFR 215.6 must be considered by the Responsible Official. The Responsible Official must also respond to these comments in an appendix to the environmental assessment. This comment opportunity is for people to provide the Responsible Official with information they feel should be considered in the decision. The record reflects that the Responsible Official considered and responded to comments.

The decision is subject to appeal by people who have provided comment or otherwise expressed interest in this particular proposed action under regulation at 36 CFR 215. Holders of written instruments for occupancy and use of National Forest System lands may also appeal under regulation at 36 CFR 251, but not both. Regulation at 36 CFR 251 provides appellants the opportunity for an oral presentation of their appeal. Regulation at 36 CFR 215 does not provide for oral presentations. The regulations do not allow the Responsible Official the discretion to apply one over the other. Each regulation stipulates when and where it applies.

Finding: The Responsible Official appropriately applied and followed the appeal regulations.