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Forest
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File Code: 1570-1

Date: May 19, 1998

Forest Guardians
c/o John Horning
1413 Second St., Suite One
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Certified Mail - Return Receipt
Requested

RE: Dugas Grazing Allotment Appeal #98-03-00-0021-A215
Prescott National Forest

Dear Mr. Horning:

This is my review decision on the appeal you filed (#98-03-00-0021-A215) regarding the District Ranger's decision to implement Alternative A in the Environmental Assessment (EA) for Dugas Grazing Allotment on the Verde Ranger District (FS).

On February 17, 1998, District Ranger Thomas Bonomo issued a Decision Notice concerning the implementation of an alternative that permits livestock grazing and adjusts the existing grazing management on the Dugas Allotment. The decision is subject to administrative review under the 36 CFR 215 appeal regulations.

My review of this appeal has been conducted pursuant to, and in accordance with 36 CFR 215.17. I have thoroughly reviewed the appeal record, including the recommendations of the Appeal Reviewing Officer regarding the disposition of this appeal.

As directed in 36 CFR 215.16, the District Ranger contacted the appellant to discuss informal disposition of the appeal. The record reflects that you were unavailable to meet and discuss an informal disposition of this appeal.

APPEAL ISSUES AND FINDINGS

Appellant contends that: 1) the Dugas EA violates the Prescott National Forest Land and Resource Management Plan (LRMP), as amended in June 1996; 2) FS violated National Forest Management Act (NFMA) by continuing to graze cattle without evaluating grazing suitability; 3) the decision violates Section 401 of the Clean Water Act; 4) the decision violates NFMA in regards to maintaining viable numbers of all species; 5) the EA violates the Administrative Procedures Act.



The appellant's issues are addressed as follows:

ISSUE 1: The Dugas EA violates the Prescott National Forest Land and Resource Management Plan (LRMP), as amended in June 1996.

Contention: The Appellant contends that the EA omitted the 1996 Forest Plan grazing management standards and guidelines. In addition, the appellant contends that the Forest Plan amendment requires identification of "key ungulate forage monitoring areas" and omission of such information is arbitrary and capricious. The appellant also contends that the EA violated the LRMP by adopting the Proper Functioning Condition criteria without subjecting it to public comment and notice and such a process affords less protection than LRMP standards.

Response: The grazing utilization standard and guide table contained in the June 1996 amendment to Forest Plans is intended to be applied in the absence of site-specific analysis. A site-specific analysis, which the Dugas allotment EA is, defines the utilization standard to be applied for the affected area. The EA (Document 47) and the Decision Notice (Document 92) states that the actions to be implemented require application of utilization standards. Though the EA and the decision document lacked specificity regarding what the utilization standard is, the record (Document 23) identifies that Tobosa grass is the intended key species and the utilization level of 40% during the growing season and 60% during dormancy should be applied. Document 23 also identified areas of concern that receive heavy or light use, therefore, the Deciding Official has knowledge of the location of key areas.

The Forest Plan amendment does not require that key areas be identified in an EA. Key areas are more appropriately identified in allotment management plans (AMP). Forest Service manual 2212.2 directs, "Each AMP shall set forth the objectives, standards of a specific livestock allotment or wild horse or burro territory".

Range condition was not an issue identified in the analysis, therefore the basis for a desired use level was based on other resource issues, such as increasing ground cover and providing plant diversity for antelope forage. The record (Documents 20 and 47) estimated riparian conditions to be in Good condition with a downward trend, not Poor condition as asserted by the appellant. The aforementioned documents also showed that grazing impacts are small in extent and not impairing riparian condition.

Proper Function and Condition (PFC) survey method is an accepted interagency riparian assessment protocol. Implementation of administrative procedures, that in of themselves, do not result in a federal action affecting the public therefore is not subject to public review. PFC is an inventory and assessment method and does not result in an administrative decision upon its conclusion.

Finding: I find that the record shows that utilization standards and key areas have been considered. Utilization standards and key areas should specifically be identified in the AMP. The Responsible Official is affirmed in regards to this issue.

ISSUE 2: FS violated National Forest Management Act (NFMA) by continuing to graze cattle without evaluating grazing suitability .

Contention: Appellant contends that the FS failed to conduct a suitability analysis to determine the appropriate uses of the land, thusly violating NFMA.

Response: Suitability determinations are a Forest Planning level assessment (as per NFMA), not a site-specific analysis requirement. As the appellant succinctly stated on page 2 of the appeal, "FS must determine 'in forest planning, the suitability and potential capability of the National Forest lands...', 36 CFR, Sec. 219.20". The appellant has failed to make the connection between "forest planning" regulations and the resultant "Forest Plan". An EA for an allotment is not a "Forest Plan", rather the instrument that implements the "Forest Plan" on the ground.

Finding: I find that a suitability assessment has already been completed at the Forest Planning level and is not required for site-specific analysis planning. The Responsible Official is affirmed in regards to this issue.

ISSUE 3: The Decision violates Section 401 of the Clean Water Act (CWA).

Contention: The appellant contends that the decision to approve the permit violates CWA by failing to address non-point source pollution issues and failing to seek and obtain Arizona Department of Environmental Quality (ADEQ) Section 401 certification.

Response: The record shows that ADEQ was contacted 4 times during the course of the NEPA analysis (Documents 22,61,97A,110) for purposes of providing input into the planning process and helping to identify non-point source issues. The record shows (Document 110) that four stream reaches were identified within the analysis area and all four streams are classed full attainment for the designated uses. Document 110 also addresses non-point source pollution issues through identification of monitoring actions to be taken and Best Management Practices to be employed. There is currently no mandatory State requirement for obtaining 401 certification for any activity, other than dredge and fill permits.

Finding: I find that the record contains documentation that has addressed the water quality issue. The Responsible Official is affirmed in regards to this issue.

ISSUE 4: The decision violates NFMA in regards to maintaining viable numbers of all species.

Contention: The appellant contends that the FS is not providing for minimal populations of wildlife (primarily riparian obligate species) by not protecting riparian areas from grazing.

Response: The record (Document 20) reflects that current riparian condition is rated Good. Localized impacts from grazing are evident although recovery of the riparian areas is rapid due to rest or deferment. Effects from grazing on riparian areas would not change from the current status due to minimal impact caused by livestock over the entire stream reaches. The EA (Document 47) and record (Document 79) shows that the significant impacts to riparian areas are caused by recreational uses which is outside the scope of this analysis.

Grazing impacts on wildlife species and riparian areas were addressed in the EA (Document 47), Supplement A to the EA (Document 87), Supplemental Wildlife Analysis (Document 86), and Biological Assessment and Evaluation (Document 91). Southwestern Willow Flycatcher does not occur within the allotment and habitat was determined to be unsuitable for the species.

The Biological Assessment and Evaluation determined that the Bell's vireo may be affected but would not cause a trend toward listing or loss of viability.

Finding: I find that the record contains documentation that has addressed wildlife and riparian issues. The Responsible Official is affirmed in regards to this issue.

ISSUE 5: The EA violates the Administrative Procedures Act.

Contention: Appellant contends that the EA is arbitrary and capricious because it failed to assess the role and functions of cryptogamic soils in the health of functioning watersheds.

Response: Cryptogamic soils was not identified as an issue in this analysis. The record shows (Document 80A) that the analysis area was evaluated for the likelihood of occurrence of cryptogamic soil and the potential was found to be low.

Finding: I find that the record contains documentation addressing the cryptogamic soil issue as having low potential within the affected area. The Responsible Official is affirmed in regards to this issue.

APPEAL REVIEWING OFFICER'S RECOMMENDATION

The Appeal Reviewing Officer (ARO) has recommended that the District Ranger's decision be affirmed. The ARO found that the decision was consistent with policy, direction, and supporting evidence, with one exception. The exception is that the ARO recommends that the RO clearly identifies the utilization standard and key areas in the AMP.

APPEAL DECISION

After a detailed review of the records and the ARO recommendation, I affirm the District Ranger's decision to implement the Dugas Grazing Allotment AMP (Alternative A). The RO should clearly state that the utilization standard is 40% in the summer and 60% for winter use on key species (Tobosa grass) within identified key areas in the AMP.

My decision constitutes the final administrative determination of the Department of Agriculture (36 CFR 215.18(c)).

Sincerely,

/s/ John R. Kirkpatrick
John R. Kirkpatrick
Appeal Deciding Officer
Deputy Regional Forester, Resources

Enclosure

cc: Prescott NF; C.Gonzalez; EAP; RGE