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Agriculture

Forest
Service

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File Code: 1570-1/2200
Date: July 11, 2002

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

**CERTIFIED MAIL – RETURN
RECEIPT REQUESTED**

Re: Appeal #02-03-00-0017-A215, La Presa Allotment Decision, Coyote Ranger District, Santa Fe 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

Acting District Ranger Sanchez issued a decision on April 9, 2002, for La Presa Allotment. The decision resulted in the selection of the following alternative and authorization:

La Presa Allotment, Alternative 4, which authorizes 40 head of cattle (cow/calf), to graze from June 1 to October 31 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 concluded that: (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 La Presa 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/ Abel M. Camarena
ABEL M. CAMARENA
Acting Regional Forester

cc:
Forest Supervisor, Santa Fe NF
District Ranger, Coyote RD
Director Rangeland Management, R3
Appeals and Litigation, R3

**REVIEW AND FINDINGS
of the**

Forest Guardians' Appeal

#02-03-00-0017-A215, La Presa 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 Santa Fe Forest Plan, including the plan's allocation of acreage suitable for grazing. The Santa Fe Forest Plan complies with the requirements outlined in 36 CFR 219.20 through the analysis process applied in preparation of the forest plan (Santa Fe 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 Santa Fe 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.

In addition, the alternative selected (Doc. 23) fully supports the intended purpose of the project (Doc 18), which is to reduce impacts to water quality and riparian areas. Riparian area utilization standards, as well as vegetation condition and trend, will be monitored at appropriate times to ensure compliance and protection (Docs. 18; 23).

Finding: Continued riparian improvement is ensured under this decision and there is no violation of the Santa Fe 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 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 believes there is a lack of management for riparian habitat, and that the Forest Service must provide protection for riparian obligate species. In particular, the appellant believes...“that domestic livestock production threatens the viability of the Southwest 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”. The appellant contends that only a cessation of grazing in these watersheds, combined with active restoration work will adequately provide for the minimum habitat needs for these species.

Response: La Presa Allotment is outside of the range of the black hawk, Mexican garter snake, narrow-headed garter snake, Chiricahua leopard frog, and Arizona southwestern toad. The allotment provides no habitat for the Southwestern willow flycatcher. Only marginal foraging habitat for the Mexican spotted owl is located in the allotment as no nesting or roosting habitat exists in the allotment (Docs. 16; 17; 18).

The Forest analyzed the effects continued livestock grazing would have on riparian species and their habitats and found that riparian habitat condition would improve under the selected alternative through water developments away from the stream and herding (Docs. 11; 16; 17; 18; 23).

Finding: A review of the appeal record indicates habitat conditions for riparian dependent species will be improved by implementing the selected alternative.

ISSUE 4: Population survey data of Management Indicator Species is needed to ensure the maintenance of minimum viable populations of wildlife.

Contention: The appellant asserts that since the Forest Service lacks quantitative inventory data on many, if not all, MIS in the planning area and the forest as a whole, and the scant data that it does have indicates some species are declining, the agency’s decision is arbitrary and capricious.

Response: The Forest level analysis of Management Indicator Species provides population and habitat data for the MIS species identified in the Forest Plan (Doc. 16). In their effects analysis for the MIS species with habitat within the allotment, the Forest found the selected alternative would improve habitat conditions for elk, wild turkey, and morning dove and that continued livestock grazing would have no effect on the habitat conditions the hairy woodpecker and pinyon jay indicate.

Finding: A review of the record shows the Forest met its MIS obligations under the implementing regulations of the National Forest Management Act and was thus not arbitrary and capricious in reaching the decision.

ISSUE 5: 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: The Forest's analysis of effects shows the selected alternative would have no effect on the Northern goshawk and that the selected alternative would meet the Forest Plan Standards and Guides for this species Docs. (16; 17; 18; 23).

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

ISSUE 6: La Presa term permit issuance must be suspended until the Santa Fe 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 La Presa 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 Santa Fe 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 7: 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 address one or more issues. The formulation of alternatives is driven by significant issues identified in scoping 40 CFR 1501.2(c).

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

ISSUE 8: 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: 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. The Southwestern Region's rangeland management specialists, ecologists, and other scientists have developed these guidelines 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, are not overgrazed.

The record demonstrates that forage utilization will be monitored near the middle of the grazing season at a minimum. Utilization levels on key species will be 6-inch stubble height for Arizona fescue, 5-inch stubble height for western wheat grass, and 5-inch stubble height on riparian grasses. The record also demonstrates that cattle will be moved from the allotment when utilization of key forage species in key use areas reaches established guidelines. In addition, herding of cattle will ensure proper distribution of livestock and significantly decrease the chance that overuse of key forage species will occur (Docs. 5; 6; 18).

Finding: Utilization standards for the La Presa Allotment were developed in accordance with Forest Service Policy. 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 9: 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: Cumulative effects result from the incremental impacts of the action when added to past, present, and reasonably foreseeable future actions (40CFR 1508.7). Discussion of activities, or absence of, is found in the EA at Page 2, Section F, third paragraph. Also, Section 3 of the EA at pages 7, *Soils, Environmental Effects*; page 8, *Water/Riparian, Environmental Effects*; page 8 *Air, Environmental Effects*; page 9, *Vegetation, Environmental Effects*; and page 11, *Wildlife, Environmental Effects* discusses cumulative effects. Summarizing, each section states that since there are no direct or indirect effects from the project activities, there are no cumulative effects. Additionally, on page 19, response 14, a summary of other actions considered in the analysis can be found.

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 or not an EIS is needed.

ISSUE 10: The EA violates the Clean Water Act.

Contention: The appellant contends that the Forest Service failed to require the grazing permit applicant to obtain water quality certification from the State of Arizona.

Response: There is no requirement to obtain certification from the State of Arizona for activities occurring in New Mexico.

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 11: 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 Santa Fe National Forest Plan. The forest plan provides direction for management emphasis within the project area. Net public benefits were analyzed appropriately during the forest plan's 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 12: 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".

Finding: The Responsible Official made a reasoned and informed decision based on the purpose and need for action for this analysis, and, therefore, has not violated the Administrative Procedures Act.