



United States  
Department of  
Agriculture

Forest  
Service

Southwestern  
Region

517 Gold Avenue, SW  
Albuquerque, NM 87102-0084  
FAX (505) 842-3800  
V/TTY (505) 842-3292

**File Code:** 1570-1

**Date:** December 28, 1998

Forest Guardians  
c/o John Horning  
1413 Second St., Suite One  
Santa Fe, New Mexico 87505

Certified Mail - Return Receipt  
Request

RE: Arabella Allotment Appeal #99-03-00-0006-A215, Spencer Allotment Appeal #99-03-00-0007-A215, Loma Grande Allotment Appeal #99-03-00-0008-A215 on the Lincoln National Forest; Rowe Mesa Rangeland Management Project Appeal #99-03-00-0003-A215 on the Santa Fe National Forest; Crooks Canyon/Maverick Ecosystem Management Project Appeal #99-03-00-0005-A215 on the Prescott National Forest

Dear Mr. Homing:

This is my review decision on the appeals you filed regarding District Rangers' decisions to implement grazing management strategies and authorize grazing on: Arabella, Spencer, and Loma Grande allotments, Smokey Bear Ranger District, Lincoln NF; Rowe Mesa Rangeland Management Project (Springs, Barbero, and Valle Grande allotments), Pecos-Las Vegas Ranger Districts, Santa Fe NF; and Crooks Canyon/Maverick allotments, Bradshaw Ranger District, Prescott NF.

The following decisions were issued and are subject to administrative review under 36 CFR 215 appeal regulations:

1. On September 29, 1998, District Ranger Gerald Hawkes issued three Decision Notices concerning the implementation of alternatives that authorize livestock grazing and rangeland management on the Arabella, Spencer, and Loma Grande allotments.
2. On September 21, 1998, District Ranger Daniel Crittenden issued a Decision Notice concerning the implementation of livestock grazing and rangeland management on the Rowe Mesa Rangeland Management Project.
3. On September 30, 1998, District Ranger Ernest Del Rio issued a Decision Notice concerning the implementation of livestock grazing and rangeland management on the Crooks Canyon/Maverick Ecosystem Management Project.

Due to the identical nature of these appeals, I have chosen to consolidate my response into one decision document. My review of these appeals has been conducted pursuant to, and in accordance with 36 CFR 215.17. I have thoroughly reviewed the appeal records, including the recommendations of the Appeal Reviewing Officer regarding the disposition of these appeals. My review decision hereby incorporates by reference these appeal records.



As directed in 36 CFR 215.16, the District Rangers contacted the appellant to discuss informal disposition of the appeals. The record reflects that Mr. Homing declined to meet with any of the District Rangers for the purpose of seeking informal resolution of appeal issues.

Leslie Glustrom requested and was approved interested party status regarding the appeal of the Crooks Canyon/Maverick Allotments, pursuant to 36 CFR 215.13(e). Her comments were entered into the project record and have been considered in this decision.

### **APPEAL ISSUES AND FINDINGS**

Appellant contends that: 1) The Forest Service violated the National Forest Management Act (NFMA) and the National Environmental Policy Act (NEPA) by continuing to graze cattle without evaluating grazing suitability and a decision is therefore premature; 2) the analyses do not meet the requirements of Forest Service Handbook 2209.11 "Range Project Effectiveness Handbook" for economic analysis; 3) The EA's violate the Clean Water Act by failing to require permittee certification from the State of Arizona; 4) The decisions violate the Multiple Use and Sustained Yield Act by failing to manage for the highest and best use, and without impairing land productivity; and 5) The EA's violate the Administrative Procedures Act

The appellant's issues are addressed as follows:

ISSUE 1: The Forest Service violated NFMA and NEPA.

**Contention:** Appellant contends that NFMA and NEPA were violated because the District Rangers failed to evaluate the allotments' suitability for grazing. As the appellant stated on page 2 of each appeal, "...the Forest Service must determine "in forest planning the suitability and potential capability of the National Forest System lands..." 36 C.F.R., Sec. 319.20." Appellant further contends that regulations at 36 CFR 219.3 require the project environmental assessments (EA's) to address the economic and environmental consequences and the alternative uses for-gone. Absent this suitability analysis, appellant argues that the Forest Service failed to discharge its obligation under NEPA to take a hard look at each alternative, and therefore the decisions are premature.

**Response:** Although appellant claims NFMA requires that suitability analyses be conducted at the project level, he is mistaken. The Forest Service operates within a two-tiered planning and decision making process. The first level is the programmatic forest plan level and the second is the site-specific project level, such as a grazing allotment. The appellant has failed to make the distinction between forest planning and project planning. The appellant argues that there are regulatory requirements that the agency must fulfill in regards to completing a suitability analysis, in which appellants cited 36 CFR 319.20 as the regulation. There is no regulatory requirement that compels the Forest Service to conduct a suitability analysis and determination at an allotment or project planning level.

The purpose of the NFMA regulations (36 CFR 219) is to "... set forth a process for developing, adopting, and revising land and resource management plans for the National Forest System..." Appellant references the NFMA regulations' suitability requirement which applies to forest plan level decisions, not project level decisions. The forest plan is the proper and only level at which suitability per the requirements of 36 CFR 219.20 is made.

The forest planning process inherently undertook a quantitative analysis fully incorporating economics into the process. The forest plans fully comply with the requirements outlined in 36 CFR 219.20 through the analysis process applied in preparation of the Forest Plan (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. As previously described, all requirements for suitability under the provisions of 36 CFR 219.20 were met in completion of the forest plans. The 36 CFR 219 regulations are not applicable in this case, therefore, the decision is not premature. The District Rangers are affirmed with respect to issues related to the alleged failure to conduct a suitability analysis.

ISSUE 2: Inadequate range project effectiveness analysis.

**Contention:** Appellant asserts that the analyses do not meet the requirements of Forest Service Handbook 2209.11 "Range Project Effectiveness Handbook" for economic analysis.

**Response:** Forest Service Handbook 2209-11 "Range Project Effectiveness Handbook" was removed from the Forest Service directives system April 1, 1998.

**Finding:** With the removal of FSH 2209.11 from Forest Service directives, appellant's issue is moot. The District Rangers are affirmed on this issue.

ISSUE 3: The EA's violate the Clean Water Act (CWA).

**Contention:** The appellant argues that the Forest Service failed to obtain water quality certification from the state of Arizona as required under Section 401 of the Clean Water Act.

**Response:** There is no requirement to obtain certification from the state of Arizona for the four projects occurring in New Mexico. The Crooks Canyon/Maverick Ecosystem Management Project decision notice states, "Regarding compliance with the Clean Water Act, the Arizona Department of Environmental Quality has been involved in the planning process, applicable BMP's have been identified for use, and no special permits are required of the Forest Service." (Project Record Document Nos. 4, 20, 47, 68, 104, 156,163, 165, 242 (APPENDIX 3), 243).

**Finding:** The District Rangers did not violate the Clean Water Act and are affirmed on this issue.

ISSUE 4: The Decisions violate the Multiple Use and Sustained Yield Act.

**Contention:** The appellant alleges that the decisions violate the Multiple Use and Sustained Yield Act by failing to manage for highest and best use. Appellant further alleges that the decisions to authorize livestock grazing will permanently impair land productivity.

**Response:** The decisions concerning highest and best use were made during development of the forest plans. The EA's reflect that range conditions will improve under the selected management systems (Spencer EA p. 4-6; Loma Grande EA p. 4-6; Arabella EA p. 4-6; Rowe Mesa Rangeland Management Project EA p. 28-3 1; and Crooks Canyon/Maverick Ecosystem Management Project EA pp. 19-22 and 24-28).

**Finding:** The records indicate that land productivity is not being impaired. The District Rangers are affirmed regarding this issue.

ISSUE 5: The EA's violate the Administrative Procedures Act.

**Contention:** Appellant asserts that the EA's contain no information which would indicate that the selected alternative would remedy problems on the allotment. Appellant suggests there is little known about the effects of the selected actions and that what effects are known, are detrimental.

**Response:** The records contain adequate documentation addressing effects of the selected actions and alternatives on the human environment (Spencer EA p. 4-8; Loma Grande EA p. 4- 10; Arabella EA p. 4-8; Rowe Mesa Rangeland Management Project EA p. 21-40; and Crooks Canyon/Maverick Ecosystem Management Project EA pp. 19-41). Each effects analysis provides a clear basis for choice among the alternatives by the decision-maker.

**Finding:** The District Rangers did not violate the Administrative Procedures Act, and are affirmed on this issue.

### **APPEAL REVIEWING OFFICER'S RECOMMENDATION**

The Appeal Reviewing Officer (ARO) has recommended that the District Rangers' decisions 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 proposals were identified; (c) the proposals and decisions 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 records.

### **APPEAL DECISION**

After a detailed review of the records and the ARO recommendation, I affirm the District Rangers' decisions concerning the Arabella, Spencer, and Loma Grande allotments, Rowe Mesa Rangeland Management Project, and the Crooks Canyon/Maverick Ecosystem Management Project.

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:

Lesile Glustrom

District Ranger, Smokey Bear RD, Lincoln NF

District Ranger, Pecos-Las Vegas RD, Santa Fe NF

District Ranger, Bradshaw RD, Prescott NF