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Agriculture

Forest  
Service

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File Code: 1570-1

Date: February 16, 2001

Forest Guardians  
c/o John Horning  
1411 Second Street  
Santa Fe, NM 87505

Certified Mail – Return Receipt Requested  
7099 3220 0000 8709 9467

Re: Appeal #01-03-00-0009-A215, Sunflower Allotment Decision, Mesa Ranger District, Tonto National Forest

Dear Mr. Horning:

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 Wirtz issued a decision on November 20, 2000, for the above named allotment. The decision resulted in the selection of the following alternatives and authorization:

Sunflower Allotment (Cline Unit), Alternative E, which authorizes 35 head of cattle, (Cow/Calf) to graze yearlong.

Sunflower Allotment (Cottonwood Unit), Alternative F, which excludes livestock grazing for a period of ten years.

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 above named 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  
Deputy Regional Forester

Enclosure

cc:  
Forest Supervisor, Tonto NF  
District Ranger, Mesa RD  
Director of Rangeland Management, R3  
Appeals and Litigation Staff, R3

## **REVIEW AND FINDINGS**

of the

### **Forest Guardians' Appeal**

#### **#01-03-00-0009-A215, Sunflower Allotment Decision**

**ISSUE 1:** The Forest Service violated the National Forest Management Act (NFMA) consistency requirement by failing to comply with the 1996 Forest Plan Amendment requirement to limit forage utilization in key areas.

**Contention:** The appellant contends the decision allows grazing at a level in excess of capacity for this allotment and that monitoring of grazing use has not been provided.

**Response:** The grazing guidelines included in the 1996 amendment to the forest plans were established to ensure recovery and continued existence of threatened and endangered species. These guidelines are applicable in situations where more specific guidelines have not been established through site-specific National Environmental Policy Act (NEPA) analysis for individual allotments. As NEPA analysis is initiated on individual allotments, site-specific forage use levels are established in consultation with the U.S. Fish and Wildlife Service. The record reflects that this was done (Docs. 9, 25, 28).

The record demonstrates that stocking in the Cline Unit was reduced from 200 head of cattle yearlong to 35 head of cattle yearlong. The Cottonwood Unit was excluded from grazing for 10 years with the provision to do another NEPA analysis prior to restocking this unit (Docs. 9, 28).

A review of the record also disclosed that key areas for monitoring in uplands and in riparian areas will be established (Doc. 25).

Irrespective of the numbers of livestock authorized to graze in any given year (as factors such as precipitation influence forage production) cattle will be removed from pastures or an allotment as utilization levels are reached. The record documents that currently all livestock have been removed from the allotment because of drought.

**Finding:** The site-specific utilization standards developed by the Interdisciplinary Team are consistent with the 1996 Record of Decision for the amended forest plans. Monitoring of key areas will ensure adherence to the established utilization rates and progression toward overall healthy watershed conditions.

**ISSUE 2:** 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, 1999 U.S. App. LEXIS 20026 (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 (Tonto 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 3:** The decision violates the Tonto National Forest Plan, the Regional Guide, and the Biological Opinion (BO) on amended Forest Plans, 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. In addition, the 1996 BO assumed that the Forest Service would implement management strategies to restore habitats as soon as possible. The selected alternative does not allow for this rapid improvement of riparian areas.

**Response:** Grazing guidelines included in the 1996 amendment to the forest plans were established to ensure recovery and continued existence of threatened and endangered species. These guidelines are applicable in situations where more specific guidelines have not been established through site-specific NEPA analysis for individual allotments. The record demonstrates the Cottonwood Unit has been excluded from grazing for 10 years with the provision to do another NEPA analysis prior to restocking this unit. An important component of this decision is riparian recovery (Docs. 9, 28). Additionally, reduced stocking rates in the Cline Unit are expected to benefit riparian areas.

**Finding:** Continued riparian improvement is ensured under this decision and there is no violation of the Tonto National Forest Plan.

**ISSUE 4:** The decision violates the National Forest Management Act's requirement to maintain viable numbers of all species.

**Contention 1:** The appellant contends the Forest Service must provide protection and habitat for riparian obligate species. Appellant cites 36 CFR 219.19 planning regulations in supporting the

assertion. The appellant further contends that “despite this direction “ (i.e. forest plans), the Forest Service failed to protect riparian habitats and riparian obligate species.

**Response:** Regulations at 36 CFR 219 Subpart A, set forth a process for developing, adopting, and revising land and resource management plans for the National Forest System, as required by the Forest and Rangeland Renewable Resources Act of 1974, as amended [36 CFR 219.1(a)]. The forest plan includes goals, objectives, standards, and guidelines for the protection of threatened, endangered, Forest Service sensitive, and other species and their habitats. Site-specific projects, such as the proposed action, are designed under the direction provided in the forest plan.

The proposed action provides ten years of non-use in the entire Cottonwood pasture and requires a new NEPA analysis prior to any livestock grazing being permitted in this pasture. The proposed action also: reduces livestock numbers in the Cline pasture from 200 to 35; requires existing exclosures, fences, and other structures be brought up to and maintained at standard prior to any grazing occurring; prescribes utilization levels for upland and riparian species and stream bank protection; and provides a two pasture system where the Picadilla Creek Pasture receives non-use during the growing season. All of these measures are designed to protect riparian habitats and riparian obligate species (AR 5, 9, 25, 28 and 30).

**Contention 2:** The appellant contends “[t]he decision notice and allotment management plans violate NFMA consistency and viability provisions by failing to adequately protect the Northern Goshawk.”

**Response:** Although there are scattered pockets of ponderosa pine habitat in both pastures, habitat sufficient to meet the needs of the northern goshawk does not occur in these areas (AR 5, 9, 25)

**Finding:** The Responsible Official reached a reasonable conclusion, based on the effects of the selected alternative, that the proposed action would maintain viability of all wildlife species in the project area.

**ISSUE 5:** 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).

The environmental assessment (EA) discusses four alternatives that were considered and subsequently dropped from detailed study. The EA includes a ‘no-grazing’ alternative, and five action alternatives, which were studied in detail.

The EA includes brief discussions of alternatives as required by section 102(2)(E) of NEPA which states, “Study, develop and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources.” The EA indicates that there were four issues identified as being significant to the proposed action (40 CFR 1501.7(a)(3)). The alternatives studied in detail meet the purpose and need for action and address the identified issues.

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

**ISSUE 6:** 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 EA includes a discussion of activities identified as contributing cumulatively to the effects of the action under consideration. The discussion concludes that recreation and off-highway vehicle activities are contributing to riparian degradation, soil erosion and compaction, and trampling of vegetation. The action alternatives are predicted to reduce these impacts instead of adding to them (EA p. 35).

**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 7:** The EA violates the Clean Water Act.

**Contention:** The appellant contends that the Forest Service failed to require the grazing permittees to obtain water quality certification from the State of Arizona for this 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 for this project shows that the appropriate non-point source pollution considerations, including Best Management Practices (V2, Doc. 28), were made during the planning process. The project record shows that the Arizona Department of Environmental Quality (V.1, Doc. 10; V.2, Doc. 10) was consulted during the project scoping and planning phases. Improvement of soil and riparian condition were identified as significant project issues (V2, Doc. 9) and the alternative selected provides for

management changes that will have a positive effect on improving ground cover, reducing erosion and protecting riparian areas (V2, Doc. 28).

**Finding:** Appropriate procedures were followed and adequate mitigation is planned for this allotment decision. There will be no violation of the Clean Water Act.

**ISSUE 8:** 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 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. In addition, the record indicates that the selected alternatives will improve ground cover, reduce erosion and protect riparian areas.

**Finding:** This decision will improve land productivity and is therefore, consistent with the Multiple Use and Sustained Yield Act.

**ISSUE 9:** 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 the allotments”.

**Response:** The EA effects analysis documentation indicates that the selected alternatives meet the stated purpose and need for (EA pp. 16, 20, 23-24, 26, 31).

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