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File Code: 1570-1

Date: December 4, 1997

Mr. John Horning
Forest Guardians
1413 Second Street
Suite One
Santa Fe, NM 87505

Certified Mail - Return
Receipt Requested

Dear Mr. Horning:

This is my review decision on the appeals filed by you on behalf of Forest Guardians (#98-03-00-0005-A215; #98-03-00-0006-A215; #98-03-00-0007-A215) regarding the Tonto Basin District Ranger's decisions concerning grazing strategies and associated improvements for the Armer Mountain, A Cross, and Dagger Allotments.

On August 28, 1997, Tonto Basin District Ranger, Tina Terrell, issued three records of decision (ROD's) concerning the grazing strategies and associated improvements for the aforementioned allotments. The decisions are subject to administrative review under the 36 CFR 215 appeal regulations.

My review of these appeals has been conducted pursuant to, and in accordance with, 36 CFR 215.17. Due to the similarity of your appeals, I have elected to consolidate my decisions into one document, pursuant to 36 CFR 215.18. I have thoroughly reviewed the appeal record, including the recommendations of the Appeal Reviewing Officer (copy enclosed) regarding the disposition of these appeals.

APPEAL SUMMARY

As directed in 36 CFR 215.16, an offer to meet for the purpose of seeking informal disposition of this appeal was made by the District Ranger. The record indicates no resolution was reached.

Appeal issues were organized into major issue subjects for this review and included the following: 1) alleged violations of the Tonto National Forest Plan, 2) alleged violations of the National Forest Management Act (NFMA) suitability requirement, 3) alleged violations of the National Forest Management Act (NFMA) species viability requirement, and 4) alleged violations of the Multiple Use and Sustained Yield Act (MUSYA), and 5) alleged violations of the Endangered Species Act (ESA).

APPEAL ISSUES AND FINDINGS

Issue 1: Forest Plan Consistency

Contention: Appellant argues that, "The Forest Service is violating the Tonto National Forest Plan by failing to adequately protect riparian habitats."

Response: Appellant cites a Tonto Forest Plan narrative response to an issue in the Public Issues and Management Concerns Chapter and expected future conditions in the Plan's Monitoring Chapter. Specific management direction is found in the Management Prescription Chapter of the Plan. Forest-wide management direction concerning riparian areas and grazing are found on pages 41 and 42 of the Plan. Relevant management area standards and guidelines are reproduced in Appendix L of the EIS.

Forest plan direction concerning riparian areas is reflected in the desired condition and project goals and objectives (EIS p. 6-7; Record Doc. G). Comparison of existing and desired riparian conditions are made on EIS pages 4-5. The selected alternative is expected to improve riparian vegetation conditions and move the area toward the desired condition (EIS p. 17; Record Docs. M and Q).

Alternative 3 was appropriately found to be consistent with the Tonto Forest Plan in the EIS (EIS p. 32). The District Ranger indicated that the project was designed in conformance with forest plan standards and incorporates appropriate forest plan guidelines in her ROD's (ROD's p. 4). The EIS discussions of purpose and need, alternative descriptions, and effects disclosure, along with the administrative record support this conclusion. The District Ranger is affirmed on the issue of forest plan consistency.

Issue 2: Grazing suitability

Contention: Appellant contends that, "The Forest Service violated the National Forest Management Act (NFMA) by continuing to allow cattle grazing on the allotment without first evaluating it's suitability for grazing."

Response: Although appellant claims NFMA requires 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. There is no requirement in Forest Service regulations or policies that a suitability determination be made at the allotment or project level of planning.

The purpose of the National Forest Management Act (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..." The section of the NFMA regulations (36 CFR 219.3) referenced by appellant applies to forest plan level decisions, not project level decisions. Therefore, this point of appeal is outside the scope of this site specific project level analysis and decision.

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 plan fully complies 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).

There is no requirement to conduct a suitability analysis when conducting a NEPA analysis at the project level concerning the 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 plan.

The District Ranger is not required to conduct a suitability analysis at the project level of analysis and decision-making and, therefore, is affirmed with respect to issues related to alleged violations of the NFMA.

Issue 3: NFMA requirements for species viability

Contention: Appellant asserts that, "The decision violates the NFMA's requirements to maintain viable numbers of all species." Appellant further contends that livestock production in the Salt River watershed threatens the viability of the Southwest willow flycatcher, Bell's vireo, yellow-billed cuckoo, black hawk, Mexican spotted owl, lowland leopard frog, narrowheaded garter snake, Gila roundtail chub, ferruginous pygmy owl, Western mastiff bat, and occult little brown bat.

Response: The National Forest Management Act (NFMA) is primarily a planning statute, designed to guide development, amendment, and revision of Forest Plans for the multiple-use and sustained yield of the nation's national forests. Specific requirements of forest plans for the maintenance of viable populations of fish and wildlife are outlined in regulation at 36 CFR 219.19. These regulations provide no specific direction for project level analysis and decision-making.

The NFMA established no statutory scheme to provide for diversity. The diversity provision in the Act does not mandate any particular level of diversity of plant and animal communities, but rather requires that this issue be considered in the context of the discretionary multiple-use mix of outdoor recreation, range, timber, watershed, wildlife and fish, and wilderness.

The NFMA regulations apply to preparation of forest plans and are beyond the scope of site-specific project level decisions. The Forest Plan for the Tonto National Forest determined that fish and wildlife habitat would be managed for the maintenance of viable populations of fish and wildlife in conformance with 36 CFR 219.19.

The forest plan complies with the NFMA and 36 CFR 219.19 for fish and wildlife viability. NFMA requires the Forest Service to measure proposed activities against the forest plan forest-wide standards and guidelines. The District Ranger found the decisions to be consistent with the Tonto Forest Plan. Each project will continue to maintain viable populations of plant, fish and wildlife resources.

The biological assessment and evaluation documents consideration of specific species referenced in appellants contention above (Record Doc. R-1). The District Ranger consulted on the Federally listed species, and the US Fish and Wildlife Service returned a Biological Opinion finding that the actions were not likely to jeopardize the continued existence of Mexican spotted owl or southwest willow flycatcher (Record Doc. T-1, T-2). The BA/E found that the selected action will not affect the other species cited (Record Doc. R-1).

The District Ranger is affirmed on the issue of species viability.

Issue 4: Multiple Use and Sustained Yield Act (MUSYA)

Contention: Appellant contends that, "The decision to approve the Armer [A Cross] [Dagger] Allotment violates the Multiple Use and Sustained Yield Act by failing to manage the land for the highest public benefit and by permitting activities which result in permanent impairment of the productivity of the land."

Response: Appellant asserts that the MUSYA has been violated because the decision to approve the permits will impair the long-term productivity of lands on the Tonto National Forest. Appellant cites past grazing practices in general as having "permanently degraded riparian zones, native fisheries, grasslands, and forests." Appellant has provided no evidence that these decisions will impair the long term productivity of the allotment areas.

The EA's disclose that vegetation, riparian, soil and watershed condition, and wildlife habitat condition and trends are being maintained or are improving. Contrary to appellant's claims, the record indicates that productivity is being maintained.

The District Ranger is affirmed with respect to appellant issues concerning alleged violations of the MUSYA.

Issue 5: Endangered Species Act (ESA)

Contention: Appellant alleges that, "The decision to approve grazing on the permit area violates the ESA." Further, the Forest Service has failed to ensure recovery of the southwest willow flycatcher and razorback sucker.

Response: The District Ranger conducted formal consultation with the US Fish and Wildlife Service pursuant to the ESA. The biological assessment and evaluation documents consideration of southwest willow flycatcher and razorback sucker (Record Doc. R-1). The District Ranger consulted on the Federally listed species, and the US Fish and Wildlife Service returned a Biological Opinion finding that the actions were not likely to jeopardize the continued existence of either species (Record Doc. T-1, T-2).

The record documents the expected improvement in riparian and upland vegetation conditions as a result of the selected action (EIS p. 17-18; Record Docs. M and Q). The biological assessment and evaluation also documents the liklihood that riparian vegetation improvement in Cherry Creek could result in additional suitable habitat for southwest willow flycatcher. The District Ranger has conformed to the procedural requirements of ESA and is affirmed on this issue.

APPEAL REVIEWING OFFICER RECOMMENDATION

The appeal reviewing officer (ARO) has recommended the District Ranger's decisions concerning the Armer, A Cross, and Dagger Allotments be affirmed. 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.

DECISION

After a detailed review of the records and the ARO recommendation, I find the District Ranger conducted a proper and public NEPA process that resulted in a decision that is consistent with the Tonto National Forest Plan.

The District Ranger is affirmed with respect to all appellant contentions related to the Armer, A Cross, and Dagger Allotments. My decision constitutes the final administrative determination of the Department of Agriculture [36 CFR 215.18(c)].

Sincerely,

/s/ Gilbert Vigil
GILBERT VIGIL
Appeal Deciding Officer
Acting Deputy Regional Forester

Enclosure

cc:
Tonto Basin Ranger District
D.Stewart
D.Sire