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File Code: 1570-1/2200

Date: October 31, 2001

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

**CERTIFIED MAIL -  
RETURN RECEIPT REQUESTED**

Re: Appeal #01-03-00-0048-A215, Boneyard Allotment Decision, Alpine Ranger District,  
Apache-Sitgreaves National Forests

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**

District Ranger Settles issued a decision on July 27, 2001, for the Boneyard Allotment. The decision resulted in the selection of the following alternative and authorization:

Boneyard Allotment, Alternative 4, which authorizes 87 head of cattle, (cow/calf) to graze July 15 through October 15 annually (*currently 159 head of cattle (cow/calf) are permitted June 1 through October 31 each year*).

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.



**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/ Alan J. Koschmann  
JAMES T. GLADEN  
Appeal Deciding Officer,  
Deputy Regional Forester,  
Resources

Enclosure

cc:

Forest Supervisor, Apache-Sitgreaves NFs  
District Ranger, Alpine RD  
Director of Rangeland Management, R3  
Appeals and Litigation Staff, R3

## **REVIEW AND FINDINGS**

of the

### **Forest Guardians' Appeal**

#### **#01-03-00-0048-A215, Boneyard 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, stating, "...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 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 (Apache-Sitgreaves 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 Apache-Sitgreaves 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.

The Environmental Assessment (Doc. 99, EA, pp. 17, 18, 21, 23, 25, 26) and Decision Notice (Doc. 100, DN, pp. 1, 2, 5, 7) describe how the selected alternative will improve riparian conditions to achieve recovery consistent with the Forest Plan. The selected alternative includes

eliminating livestock grazing along the Coyote Creek riparian corridor, restricting grazing in other areas, monitoring the forage use to ensure standards are met, and limiting the season of use.

**Finding:** Continued riparian improvement is ensured under this decision, and there is no violation of the Apache-Sitgreaves 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 points to the perceived lack of management for riparian habitat, and further contends 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 Southwestern 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.

**Response:** The Forest completed an in-depth review of the effects of each of the proposed alternatives on federally listed species, regional sensitive species and Forest-designated management indicator species (MIS). They detailed their findings in AR-26, 92, 94, 98, 99 and 100. Habitat trends for all species were indicated to be stable or improving under the preferred alternative for all species compared with the current management strategy (AR-98). Review of the appeal record finds no evidence that the proposed action will reduce the viability of any MIS, game species, Regional Forester-designated sensitive species or federally listed or candidate species analyzed in the EA. The only important riparian area in the allotment (Coyote Creek) is excluded from grazing (AR-100). Thus, the viability of none of the riparian associated species identified by the appellant would be affected by the proposed action. A Biological Opinion issued by the US Fish and Wildlife Service on 2/26/2001 further supports the maintenance of viability of federally listed species on the allotment, with a conclusive determination that the proposed action *would not jeopardize the continued existence* (i.e., viability is maintained) of the loach minnow and would not result in adverse modification or destruction of designated critical habitat, (AR-94).

**Finding:** Review of the appeal record finds no evidence that the proposed action will reduce the viability of any of the species identified by the appellant, or any other MIS, game species or federally listed species under the ESA, as analyzed in the EA and supporting documentation. The proposed action maintains or improves habitat quality for the species analyzed.

**ISSUE 4:** The decision violates NFMA consistency and viability provisions by failing to protect the Northern goshawk adequately.

**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 allotment contains one designated Northern goshawk Post fledgling Area, (AR-92). In this regard the Forest has followed the Northern goshawk conservation recommendations. Maximum utilization outlined in the document under appeal is set at 25% or less and is to be determined by *key forage species in key areas* (AR-100). “Livestock key areas and key forage species are identified in the 1998 Utilization survey report and map” (AR-100). Forage utilization will have to average 20% or less in order to meet the mid-year checks. The Forest has followed the conservation recommendations for the Northern goshawk, and proposed utilization will average less than 20%.

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

**ISSUE 5:** The Boneyard term permit issuance must be suspended until the Apache-Sitgreaves National Forests revise the 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 Boneyard 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 Apache-Sitgreaves 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 6:** 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 EA defines the purpose and need, objectives and desired conditions to be achieved, and key issues (Doc. 99, pp. 4-11). The EA describes a range of alternatives consistent with that scope (pp. 14-15). The appeal (Doc. 116) does not identify another specific alternative to be considered.

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

**ISSUE 7:** 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 (FSH2209.21). This handbook specifically describes appropriate forage utilization levels recommended for the purpose of improving rangeland condition. Southwestern Region 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 any pasture within an allotment, is not overgrazed.

A production utilization survey was completed in 1998, consistent with FSH 2209.21, the Region 3 Rangeland Analysis and Management Guide (6/97), and the Apache-Sitgreaves Forest Plan as amended. Actual use was collected on 57 key areas identified in the accompanying report and map. Key species included muttongrass, upland sedges, Kentucky bluegrass, rush, and Canada bluegrass in the Boneyard Pasture; upland sedges, Canadian bluegrass, Arizona fescue, mountain muhly, tufted hair grass, and timothy in the Grassy Hollow Pasture; Arizona fescue, mountain muhly, and upland sedges in the Middle Pasture; and blue grama and spike muhly in the Nutrioso Winter pasture. Allowable use levels ranging from 10 to 25 percent were established by key area based on factors such as proximity to water, range condition and trend, and steepness of terrain (Doc. 16). These standards will be added to Part 3 of the Term Grazing Permit. Livestock will be required to move to the next scheduled pasture or removed from National Forest Lands, as appropriate, when utilization standards are met (Doc. 100).

The purpose of an environmental assessment is to disclose the environmental effects of a Federal action and make a determination whether the effects rise to the threshold that trigger the requirement to do an environmental impact statement. Establishing and monitoring forage utilization standards ensures that grazing will not have a significant effect on the environment. The effects of grazing on other resources have been disclosed in the environmental assessment.

**Finding:** The Responsible Official has met the requirement of NEPA, which is to disclose the effects of the proposed action on the human environment. 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 8:** 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 and record show that past, present, and reasonably foreseeable actions were considered in terms of their potential contribution to cumulative effects (Doc. 99, pp. 17-35; and Doc. 39). The record shows that the cumulative effects analysis was done at the 5<sup>th</sup> code watershed scale and included consideration of timber sale activities, grazing by wild ungulates, past livestock grazing, road uses, recreational activities, fires, and prescribed burns.

**Finding:** The cumulative effects analysis is adequate for an informed decision and for the purpose of determining significance and whether an EIS is needed.

**ISSUE 9:** The EA violates the Clean Water Act.

**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:** The State of Arizona does not require water quality certification for dispersed non-point activities such as livestock grazing. However, the record shows that the appropriate non-point source pollution considerations, which include Best Management Practices, were made during the planning process (Doc. 99, page 15). The project record also shows the Arizona Department of Environmental Quality (Doc. 8) was consulted during the project scoping and planning phases. In addition, the alternative selected responds to soil and water quality issues through management changes that will have a positive effect on improving ground cover, reducing erosion, and protecting riparian areas (Doc. 100).

**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 10:** 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.

The EA describes how the selected alternative will improve riparian, range and soil conditions, and would not impair long-term soil productivity (Doc. 99, pp. 17, 18, 25, 26, 39).

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

**ISSUE 11:** 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.”

**Response:** The EA describes the problems on the allotment and the desired conditions to be achieved, such as improving range and soil conditions (Doc. 99, pp. 5-10). It describes how the selected alternative will improve those conditions and thereby remedy the problems identified (Doc. 99, pp. 17, 18, 21, 25, 26, 30).

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