



United States
Department of
Agriculture

Forest
Service

R3 Regional Office

333 Broadway SE
Albuquerque, NM 87102
FAX (505) 842-3800
V/TTY (505) 842-3292

File Code: 1570-1/2200

Date: December 2, 2002

Forest Guardians
c/o Hamilton Smith
312 Montezuma, Suite A
Santa Fe, NM 87501

**CERTIFIED MAIL – RETURN
RECEIPT REQUESTED
NUMBER: 7000 2870 0000 1135 3052**

Re: Appeal #02-03-00-0031-A215, Beehive and Sheep Springs Allotments Decision,
Springerville Ranger District, Apache-Sitgreaves National Forest

Dear Mr. Smith:

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 allotments.

BACKGROUND

District Ranger Macivor issued a decision on August 23, 2002, for the Beehive and Sheep Springs Allotments. The decision resulted in the selection of the following alternative and authorization:

Beehive/Sheep Springs Allotments, Alternative 5, which authorizes 2000 head of sheep (Band 1) to graze June 1 through August 18 annually; 2000 head of sheep (Band 2) to graze from June 2 through August 19 annually; 400 head of sheep (truck herd) to graze June 1 through September 25 annually; and 333 head of cattle (cow/calf) to graze July 1 through 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 proposals were identified; (c) the proposals 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 allotments, 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
Appeal Deciding Officer, Deputy Regional Forester

cc: David M Stewart, John C Bedell, John Macivor, Christina Gonzalez, Philip Settles

REVIEW AND FINDINGS

of the

Forest Guardians' Appeal

#02-03-00-0031-A215, Beehive and Sheep Springs Allotments 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 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 Forests 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 Forests 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.

Existing riparian ecosystem conditions are disclosed on pages 12 and 13, and Appendix B of the environmental analysis (Doc. 165). Riparian ecosystem condition is identified as a key issue in the EA. The environmental effects on page 52 of the EA show that the chosen alternative moves the riparian condition from poor to good condition. Site-specific ungulate utilization levels were identified during this analysis to achieve desired conditions for riparian ecosystems. This is in

accordance with the Forest Plan. The decision limits livestock watering and reduces utilization of herbaceous species in key riparian areas (Doc. 175). The decision provides the opportunity for rapid riparian recovery by reducing livestock grazing pressure on riparian plant species and on the upland watersheds, which influence the riparian areas (Doc. 175).

Finding: Continued riparian improvement is ensured under this decision and there is no violation of the Apache-Sitgreaves National Forests 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 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. 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: The EA analyzed the effects to Management Indicator Species, Region 3 Sensitive Species, and seven Federally Listed species on the allotments (PR # 165, 46, and 47). The Yavapai leopard frog and Arizona Southwestern toad are not found on the Apache-Sitgreaves National Forests. Habitat for the Southwestern willow flycatcher does not currently exist on the allotments, but occupied habitat exists within two miles of the allotments. Cowbird trapping is ongoing to mitigate any potential effects, as a result the selected action “may affect, but would not likely have an adverse effect” on this species. The yellow-billed cuckoo, Bell’s vireo, black hawk, and Mexican garter snake do not currently exist in the allotments and their habitat has little or no potential to develop in the allotments. The proposed action should have no effect on these species’ habitat. The proposed action “may affect- not likely to adversely affect” the Mexican spotted owl based on limited livestock grazing due to steep slopes and dense canopy cover.

Finding: Based on the review of the project record, the Forest did not violate the NFMA requirement to maintain viable numbers of all species.

ISSUE 4: 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 Beehive/Sheep Springs Allotments contain habitat and at least two nest sites (PR # 165, page 23). The guidelines referred to by the appellant are management recommendations and were not part of the Forest plan amendment. Site-specific grazing utilization guidelines for the Sheep Springs/Beehive Allotments are found in the final EA (PR # 165, pages 42-43) and are in compliance with the Forest Plan as amended.

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

ISSUE 5: The Sheep Springs Beehive term permit issuance must be suspended until the Apache-Sitgreaves National Forests revise 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 Sheep Springs/Beehive 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 environmental assessment (EA) Appendix G discusses five alternatives that were considered and subsequently dropped from detailed study. The EA includes a "no-grazing" alternative, and four action alternatives, which were studied in detail.

The EA includes 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 key 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 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 (FSH 2209.21). 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 pastures within an allotment, are not overgrazed.

The record demonstrates that site-specific utilization standards for herbaceous forage have been developed by pasture considering the existing conditions of soil, riparian, aquatic, and wildlife habitat. Livestock will be removed from pastures when allowable use standards are met on the key areas. Utilization levels in upland areas within individual pastures will vary between 25 and 40 percent. In addition, utilization levels of 15 percent early season and 25 percent late season will be applied in riparian areas in unsatisfactory condition and 35 percent in riparian areas in satisfactory condition (Docs. 165; 175).

Finding: Utilization standards for the Beehive/Sheep Springs Allotments 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 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, Appendix E, identifies six reasonably foreseeable future actions in or near the project area that have the potential to contribute cumulatively to the effects of the actions under study. The EA also notes that past and current actions have already shaped the affected environment (EA p. 53). The EA effects analysis includes consideration of these actions (EA p. 91). A cumulative effects analysis related to economic impacts encompasses Navajo, Apache, and Greenlee Counties with respect to predicted grazing permit reductions and their impact on the local economy.

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 9: 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: The appropriate non-point source pollution considerations, which include Best Management Practices, were made during the planning process.

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 Apache-Sitgreaves National Forests Plan. The forests’ plan provides direction for management emphasis within the project area. Net public benefits were analyzed appropriately during the forests plan’s preparation, and are outside the scope of project-level analysis.

Watershed condition of the two allotments is rated satisfactory except for two areas located on the south slopes of cinder cones where ground cover is inadequate (EA p. 8). The EA also indicates that these unsatisfactory conditions are unlikely to improve or decline with changes in grazing management. Soil conditions on the Beehive Allotment are characterized as generally fair with a static or downward trend. Soil conditions on the Sheep Springs Allotment are mostly fair or good with a downward or static trend (EA p. 11). The downward trends are attributed to

decreases in ground cover. The EA effects analysis indicates that the selected alternative is predicted to increase ground cover EA p. 70).

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 and documents in the record disclose the analysis considered resource conditions on the allotment and effects of alternatives considered. In the DN/FONSI, the Responsible Official properly assessed the issues, public input, and impacts to resources in his decision rationale.

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