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Forest
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File Code: 1570-1/2200

Date: November 26, 2002

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

**CERTIFIED MAIL – RETURN
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RE: Appeal #02-03-00-0033-A215, Udall Allotment Decision, Springerville 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-referenced allotment.

BACKGROUND

District Ranger MacIvor issued a decision on August 23, 2002, for the Udall Allotment. The decision resulted in the selection of the following alternative and authorization:

Udall Allotment, Alternative 5, which authorizes 334 head of cattle (cow/calf), to graze July 1 to 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 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/ Abel M. Camarena
ABEL M. CAMARENA
Appeal Deciding Officer,
Deputy Regional Forester

Enclosure

cc: David M Stewart, John C Bedell, Philip Settles, Christina Gonzalez, John Macivor,
Mailroom R3 Apache Sitgreaves

REVIEW AND FINDINGS

of the

Forest Guardians' Appeal

#02-03-00-0033-A215, Udall 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, "...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 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.

In addition, the environmental effects show that the chosen alternative provides for increased density and vigor of both herbaceous and woody riparian species and less soil compaction. This should result in stream bank stabilization, and reduction of head cutting and sedimentation (Doc. 104). The selected alternative also provides for a series of livestock enclosures along the

North Fork of the East Fork of the Black River to prevent livestock access to the river and promote accelerated riparian recovery and improved in-stream fisheries habitat. Additionally, site-specific ungulate utilization levels were identified to achieve desired conditions for riparian ecosystems.

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 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 (MIS), Region 3 Sensitive Species, and Federally listed species on the allotment, including most of the species listed by the appellant (Docs. 104; 38; 155). The Arizona southwestern toad is not found on the Apache-Sitgreaves. Habitat for the southwestern willow flycatcher is not found on the Udall Allotment, nor is it likely to develop. The black hawk and Mexican garter snake do not occur on the Udall Allotment. The proposed action “May affect - not likely to adversely affect” the bald eagle, and Mexican spotted owl (Doc. 38), and is “Not likely to jeopardize” the Chiricahua leopard frog (Doc. 168). The US Fish & Wildlife Service concurred with these determinations in a Biological Opinion (Docs. 151; 175).

Finding: Based on a review of the project record, the Forest did not violate the National Forest Management Act (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: There are no known northern goshawk nesting sites on the Udall allotment. However, nesting and foraging habitat is present. The guidelines referred to by the appellant are management recommendations and were not part of the forest plan amendment. Site-specific grazing utilization guidelines (Doc. 157, p. 53; and Doc. 166, p. 2) and key areas have been

established (Doc. 30) for the Udall allotment 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 Udall term permit issuance must be suspended until the Apache-Sitgreaves National Forests revises 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 Udall 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).

Four alternatives were considered but not analyzed in detail (EA, pp. 40-43). Five alternatives were considered in detail (EA, pp. 43-60) that met the purpose and need of the action (EA, p. 2).

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 Guidelines. These guidelines specifically describe 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 utilization standards for herbaceous forage will be applied regardless of scheduled grazing periods for each pasture and regardless of the number of livestock in each pasture. The grazing utilization standards for key species in key areas in each pasture based on range condition are 35% for the Milkpen and OD Pastures, 30% for the Elk Pasture, and 25% for the Timber Pasture (Docs. 104; 166).

Finding: Utilization standards for the Udall Allotment 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: All alternatives discussed cumulative effects to the range resource in the EA (pp. 64, 73, 78, and 83). The EA Response to Comments (Appendix O) for questions #3 and #23 refers to records on file for cumulative effects. EA Appendix F lists 4 foreseeable activities within or near the allotment boundary and refers to a watershed cumulative effects document. That reference document (Doc. 66A), titled “Activities within the 5th HUC Watershed,” addresses all cumulative effects activities within the Upper Little Colorado River Watershed; including Beehive, Sheep Springs, and Udall allotments, on a total of 156,723 acres. The watershed cumulative effects document addresses timber sales, grazing allotments, fires, and recreation uses.

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

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 done to evaluate 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.