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Forest
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File Code: 1570-1/2200

Date: November 20, 2001

Martin Taylor
Center for Biological Diversity
P.O. Box 710
Tucson, AZ 85702

**CERTIFIED MAIL -
RETURN RECEIPT REQUESTED**
7000 2870 0000 1135 8866

RE: Appeal #02-03-00-0001-A215, Prewitt/6A Allotment Decision, Mount Taylor Ranger District, Cibola National Forest

Dear Mr. Taylor:

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 Hagerdon issued a decision on August 13, 2001, for the Prewitt/6A Allotment. The decision resulted in the selection of the following alternative and authorization:

- Prewitt/6A Allotment, Alternative B, which authorizes 240 head of cattle to graze May 1 through October 10 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 recommendations 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 records and the appeal reviewing officer's recommendations, I affirm the Responsible Official's decision concerning the above-named allotment, which authorizes grazing and implementation of management actions. In addition, I am instructing the Responsible Official to issue a correction notice clarifying that construction of an earthen dam is not included in the proposed action and is not authorized as a part of the decision.

My decision constitutes the final administrative determination of the Department of Agriculture [36 CFR 215.18(c)].

Sincerely,

/s/ Bob Leaverton (for)
JAMES T. GLADEN
Appeal Deciding Officer,
Deputy Regional Forester,
Resources

Enclosure

cc:
Forest Supervisor, Cibola NF
District Ranger, Mount Taylor RD
Director of Rangeland Management, R3
Appeals and Litigation Staff, R3

REVIEW AND FINDINGS

of the

Center for Biological Diversity's Appeal

#02-03-00-0001-A215, Prewitt/6A Allotment Decision

ISSUE 1: The Forest Service violated the National Forest Management Act (NFMA), the National Environmental Policy Act (NEPA), and the Administrative Procedures Act (APA) for failing to adequately describe the proposed action in the Environmental Assessment (EA) or Decision Notice (DN).

Contention: The appellant contends there is no indication of the proposed season of use or pasture locations for grazing in the allotment. The appellant also argues construction of earthen dams are buried in the text but are not disclosed under the description of alternatives in the EA or DN.

Response: The EA adequately describes the proposed action, stating that it involves continuance of current grazing by 240 head of cattle for 5 months and 10 days annually on a four-pasture deferred rotation system, with the season of use remaining as it has over the past 10 years (Doc. 27, pages 7, 12). The EA and record show that current grazing management is meeting legal requirements and agency expectations, and no changes are proposed (Doc. 27). The effects analysis in the EA and record show consideration of the timing and location of grazing, even though the specific season of use and pasture locations are not described in the EA (Doc. 27, pages 8-34; Doc. 1). Council on Environmental Quality (CEQ) regulations emphasize the importance of restricting the level of detail in environmental analysis documents, particularly in EAs, which should only include brief discussions of the need for the proposal, alternatives, environmental impacts, and a listing of agencies and persons consulted (40 CFR 1500.4, 1502.21, 1502.5, and 1508.9). There are no requirements in the NFMA, NEPA, and APA statutes or regulations for a specific level of detail in describing the proposed action.

Descriptions of the proposed action and preferred alternative in the EA and the selected alternative in the DN indicate that no new construction activities are being proposed or authorized (Doc. 27, pages 5 and 7; and Doc. 28, page 1). However, the wildlife effects section of the EA does mention the proposed construction of an earthen dam, which caused some apparent confusion (Doc. 27, pages 14-16).

Finding: The proposed action, preferred alternative and selected alternative are adequately described in the EA and DN, and do not violate NFMA, NEPA or the APA. However, it is recommended that the District issue a correction notice that eliminates the apparent inconsistency between those descriptions of the proposed action and what is stated in the wildlife section of the EA.

ISSUE 2: The Forest Service violated NEPA and APA for failing to develop a reasonable array of alternatives.

Contention A: The appellant contends the no grazing and continuation of management do not constitute an adequate range of alternatives.

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 nature and scope of the proposed action is limited to re-authorizing ongoing livestock management, and evidence indicates that changes in livestock management are not warranted (Doc. 27, pages 4-7; Doc. 1). The EA discloses that allotment conditions are not being significantly impacted by cattle grazing and are showing continued improvement under the current grazing system (Doc. 27). Thus, there were no allotment-specific concerns or significant issues identified in association with the proposed action (Doc. 27, pages 4-6; and Docs. 3, 5, 7, 9, 10 and others). The limited range of alternatives is consistent with the scope of the EA.

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

Contention B: The appellant contends the no-grazing alternative is erroneously described as the "no action" alternative.

Response: The CEQ interprets the "no action" alternative for project proposals to mean the proposed activity would not take place (CEQ's "40 Most Asked Questions", Federal Register, Vol. 46, No 55). If the proposed authorization of another 10-year term grazing permit does not take place, then the current permit will expire, and livestock grazing will not be allowed to occur on this allotment (Doc. 27, page 6). Therefore, the "no action" alternative entails "no grazing."

Finding: The EA appropriately describes the "no action" alternative in accordance with CEQ regulations.

ISSUE 3: The Forest Service violated NEPA and APA by failing to rigorously evaluate all reasonable alternatives with the required level of scientific integrity.

Contention: The appellant contends the analysis ignores the full range of science documenting negative impacts of livestock grazing to vegetation, soils, riparian areas, watersheds, archeological resources, and socioeconomic conditions. To substantiate his claim the appellant argues no consideration was given to health impacts of protozoan diseases transmitted by cattle, the effect of global warming on soil erosion, and the economic effects of continued grazing on other forest users.

Response: The scope of the proposed action is limited to re-authorizing ongoing livestock management, in light of evidence obtained using standard scientific protocols used by the Forest Service, indicating that current livestock management is not causing detrimental impacts but is allowing for continued improvement in environmental conditions (Doc. 27, pages 4-7; Doc. 1, 14, 17, 18). No allotment-specific concerns or significant issues related to the proposed action were identified (Doc. 27, page 6). Thus, the scope of the analysis was appropriately narrow (Doc. 27, pages 4-6). Regulations implementing NEPA require EAs to be concise documents

that briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement, including brief discussions of the environmental impacts of the proposed action and alternatives (40CFR 1508.9). Regulations implementing NEPA and APA do not require a comprehensive analysis of all possible effects associated with livestock grazing in general or an analysis of speculative effects such as grazing on global warming or the economic costs to forest users.

Finding: The Responsible Official appropriately defined the scope of the proposal and completed a brief analysis of reasonable alternatives and environmental effects within that scope.

ISSUE 4: The Forest Service has violated NFMA, the Endangered Species Act (ESA), and the Clean Water Act (CWA) by continuing to allow degradation of streams and habitat for listed species.

Contention: The appellant argues the analysis failed to document or consider water quality or prevent degradation of streams that could potentially be occupied habitat for listed or sensitive species.

Response: The Forest analyzed the effects continued livestock grazing would have on riparian species and their habitats and found livestock grazing was not impacting riparian habitat condition and trend (AR 14, 17, 27). Riparian habitats are generally present in the allotment where sufficient moisture allows for their growth. Most stream riparian habitats in this allotment contain early seral stage vegetation, with little or no woody vegetative species present. The Forest's analysis showed road alignment, off-road vehicles, and recreation, not livestock grazing, were impacting the recovery of later seral-stage riparian habitats. In areas where these three activities are not present due to the height and steepness of the stream bank, the Forest found willows and other shrub species to be present, vigorous, and expanding, whether livestock grazing was or was not occurring. Willows are not found where the three aforementioned impacting activities are occurring. One of the two meadow riparian areas was to have livestock and vehicles fenced out to promote restoration of degraded conditions caused primarily by inappropriate off-road and highway vehicle misuse.

A biological assessment and evaluation prepared by the Forest made *no effect* or *not likely to adversely affect* determinations for all federally listed species analyzed for this project. These determinations, by definition, indicate the Forest does not expect the viability of listed species to be affected by the proposed action (AR 17, 26).

Finding: Review of the appeal record finds no evidence that the proposed action will result in degradation of streams or reduce the viability of any of the species identified by the appellant, or any other MIS, game, Regional Forester sensitive, or federally listed species analyzed in the EA. The proposed action maintains or improves habitat quantity and/or quality for the species analyzed.

ISSUE 5: The Forest Service violated the National Historic Preservation Act (NHPA), NEPA, and APA for failure to prevent and obtain complete information about impacts to all archeological resources.

Contention: The appellant contends that the decision violates NHPA, NEPA and the APA because it allows livestock impacts to archaeological resources to continue in spite of knowing

that impacts had been documented at some sites and not knowing the full extent of sites being damaged.

Response: The EA (p.30) and the archaeological report (AR 30, p.6) document that approximately 20% of the allotment has been intensively surveyed and 134 sites have been recorded. NHPA does not require a 100% survey nor the identification and assessment of all sites within an undertaking's area of potential effect. The EA (p.31) and the archaeological report (AR 30, p.8-9) indicate that grazing effects were mentioned on the site forms for 33 (25%) of the 134 recorded sites in the allotment and that specific effects appeared to be present at 22 (16%) of those sites. To assess the current effects of grazing, the 22 sites where specific effects had been reported were revisited and inspected for damage. While minor effects were observed, at none of the visited sites were effects caused by ongoing cattle grazing identified as significantly impacting the qualities of the sites, which might make them eligible for the National Register of Historic Places (AR 30, p.11). Based on the results of the site inspections and on the fact that the current level of grazing is much less than historic levels, the Responsible Official determined that the preferred alternative would not have an adverse effect on historic properties. Based on a review of the archaeological report, including the extent of inventory and the results of site inspections, the State Historic Preservation Officer concurred in this finding (AR 30).

Finding: There have been no violations of the NHPA, NEPA, or APA.

ISSUE 6: The Forest Service violated ESA, NHPA, NEPA, and APA by failing to analyze interrelated and interdependent environmental impacts of the proposed action on private and state lands in the same grazing operation of the permittee.

Contention: The appellant contends 40 CFR 1508.25 requires the Forest Service to analyze the connected and cumulative impacts of livestock grazing on private and state lands within the allotment boundary.

Response: The EA and record show that actions and effects on non-Federal lands such as private lands in the allotment were considered (Doc. 27, pages 1, 9, 10; and Docs. 1, 13 and 17). Effects were described in terms of the entire allotment or watershed, without regard to jurisdictional boundaries (Doc. 27, pages 8-26; Doc. 14 and 17). The EA discloses that the alternatives would not result in any detrimental impacts; therefore, the alternatives could not add to any detrimental *cumulative* impacts (Doc. 27, summarized on page 34; Doc. 14; and refer to 40 CFR 1508.7).

Finding: Consideration of connected and cumulative actions is adequate for an informed decision and for the purpose of determining significance and whether an EIS is needed. There is no evidence to support alleged violations of ESA, NHPA, NEPA or APA.

ISSUE 7: The Forest Service violated NFMA by authorizing a new permit in the absence of a valid forest plan.

Contention: The appellant contends the Cibola Forest Plan has expired without substantive review or revision and is no longer relevant. The appellant argues that until the forest plan is revised, further implementation of all site-specific actions must be suspended.

Response: There are no statutes or regulations that describe an expiration date for land and

resource management plans. The Cibola Land and Resource Management Plan will remain in effect until it revised, consistent with the requirements of NFMA 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.