



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: May 6, 2005

Karin and Philip K. Knight
Date Creek Ranch
P.O. Box 1525
Wickenburg, AZ 85358

**CERTIFIED MAIL – RETURN
RECEIPT REQUESTED
NUMBER: 7000 2870 0000 1135 4141**

RE: Appeal #04-03-00-0010-A251, Buck Springs Allotment, Rim Ranger District, Coconino National Forest

Dear Mr. and Mrs. Knight:

This letter documents the first-level review decision of the appeal you filed regarding Forest Supervisor Rasure's (Deciding Officer) decision to implement Alternative G for management of livestock use on the Buck Springs Allotment. The Deciding Officer's decision is documented in a Record of Decision dated August 18, 2003. Your appeal has been processed under the provisions of 36 CFR 251, subpart C.

BACKGROUND

The Deciding Officer made a decision to implement Alternative G for management of livestock use on the Buck Springs Allotment on August 18, 2003. The legal notice of the Record of Decision was published in the Arizona Daily Sun on November 21, 2003.

Your first-level appeal was filed on January 7, 2004. In your appeal was a request for an oral presentation (36 CFR 251.97). In a letter dated February 5, 2004, I indicated that your appeal was timely and would be processed in accordance with 36 CFR 251. Under the provisions of 36 CFR 251.94, the Deciding Officer provided you a copy of her written responsive statement to the appeal on February 6, 2004. In her transmittal letter the Deciding Officer stated "you may file a written reply to this Responsive Statement within 20 days of the postmarked date of this letter." On February 13, 2004, you requested an extension of time to reply to the Deciding Officer's responsive statement. On April 14, 2004, I extended the time period for a decision on your appeal because of Mrs. Knight's hospitalization (36 CFR 251.89). I also asked you to contact Connie Smith when you were ready to make an oral presentation and informed you that you may request a stay of the Buck Springs Allotment Decision pending administrative review. On June 9, 2004, I received your written reply to the Deciding Officer's responsive statement. On June 9, 2004, I also received your stay request. On June 28, 2004, I notified you I was not going to issue a decision on your stay request at that time because you had agreed to hold your request pending a meeting in July with District Ranger Sears. On January 31, 2005, I notified you I would be available during the week of February 21-25 or the week of March 7-11 for conducting an oral presentation. On April 4, 2005, the oral presentation was held via telephone conference. On April 7, 2005 your provided clarification which documented some of your concerns expressed in the oral presentation.



Following the oral presentation and receipt of your clarification comments, I closed the appeal record on April 11, 2005.

POINTS OF APPEAL

The review of your appeal was confined to the substantive points raised in the appeal related to the analysis process, the appeal record, federal regulations, and the policies and operational procedures as set out in the directives system of the USDA Forest Service.

ISSUE 1: Lack of careful and considered consultation, cooperation and coordination.

Contention: You contend that although there were a lot of meetings there was no careful, and considered consultation, cooperation and coordination resulting in a reasonable proposal for an allotment management plan integrating their overall livestock operations with the Buck Springs Range Analysis. The appellants contend their concerns regarding the lack of a reasonable alternative were documented in letters dated February 10, April 20, and December 3, 2001.

Response: Your concerns were expressed in letters dated February 10, April 20, and December 3, 2001 (FEIS pages 351-365). In your February 10, 2001 letter you requested an alternative considered that "...provides for grazing at least the number of animal months shown on our term permit with further opportunity to increase livestock as forage conditions and production continue to improve." (FEIS page 362) In your April 20, 2001 letter you state "Any reasonable and prudent person would expect at least one action alternative be developed that provides for grazing at least the number of animal months shown on our term permit with further opportunity to increase livestock as forage conditions and production continue to improve." (FEIS page 360). In your December 3, 2001 letter you state "Despite numerous attempts and official requests in writing on February 10, 2001 and April 20, 2001, an alternative that truly represents the goals and objectives of the ranch is still lacking in the DEIS. We want an alternative developed that provides for grazing up to the number of animal months shown on our term permit with further opportunity to increase livestock as forage conditions and production continue to improve....We request that this alternative be fully integrated with the Date Creek Ranch operation in a coordinated ranch management plan that involves our entire livestock operations. Alternative J would be based on herding of livestock utilizing low stress livestock management techniques, collaborative development of an annual grazing plan based on previous year monitoring and following the process outlined in the current Aide Memoire for Holistic Grazing Planning....Only fences necessary to control elk grazing would be needed since livestock would be controlled by herding utilizing low stress livestock management techniques and temporary electric fence." (FEIS pages 351-352).

The record reflects herding as a livestock tool was incorporated into Alternatives D and K (FEIS page 16). Alternatives D and K rely heavily on herding to control livestock movement and all pastures may be used. Permitted numbers would be 780 cow/calf pairs or 105% of permitted numbers (FEIS pages 21; 35). Alternative J was considered but eliminated from detailed study because the Interdisciplinary Team concluded that it would not provide control over livestock for protection of riparian systems and Little Colorado spinedace based on the permittee's experimental herding/leading between 1999 and 2001 (FEIS pages 43; 373; ROD page 5). Subsequently the Interdisciplinary Team developed Alternatives D and K to provide for herding. However, temporary electric fencing and permanent fences became an integral part of Alternative K (FEIS pages 207-208; 374). There were no provisions for temporary fences in

Alternative D (FEIS pages 207-208; 374). Additionally, the record reflects Mr. Knight attended many Interdisciplinary Team Meetings where he provided information relative to the livestock operation on the Buck Springs Allotment as well as being very involved in development of a “permittee alternative” (Alternative K). Alternative K was specifically developed to meet the permittee’s desires including a management system that relies on low-stress management, minimum rangeland improvements, and tree thinning and burning (FEIS pages 373-374).

Finding: The record reflects the Responsible Official properly involved the permittees in the development of alternatives and met the requirements of Section 8 of the Public Rangelands Improvement Act of 1978.

ISSUE 2: The Buck Springs Allotment analysis was too narrowly confined.

Contention: The appellants contend that an objective decision affecting rangeland resources on the Buck Springs Allotment cannot be made when consideration of the impacts of elk grazing and unhealthy forest stand conditions on the Buck Springs Allotment resources were relegated to another time for consideration.

Response: Carrying capacity and the elk population was one of the significant issues analyzed in all alternatives, FEIS page 7. Wildlife forage capacity was addressed on pages 54 and 56. The affected environment described on pages 70-71 includes a discussion on elk. The role of elk as one of the major stressors to riparian areas is discussed (FEIS page 87; AR 24). Existing vegetative conditions including over story vegetation, under story vegetation, riparian vegetation, and noxious weeds are disclosed on pages 56-60; 62-63. The FEIS recognizes there has been significant encroachment by woody species in referencing a study by Covington and Moore in the mid-1990’s that indicates an increase in average stand density in the Bar-M area south of Flagstaff from 19 trees per acre during pre-settlement to 851 trees per acre in 1990 (page 58). The anticipated response in under story vegetation from implementation of the alternatives considered in detail is disclosed in the FEIS, pages 87-102. Cumulative effects are discussed on pages 94-100 and 102. The environmental consequences and cumulative effects on over story vegetation are disclosed on pages 102-104 of the FEIS. The anticipated effects of continued elk use on under story vegetation are disclosed for all alternatives (FEIS pages 87-93). Additionally, the Arizona Game and Fish Department (AGFD) reduced elk numbers significantly since 1994 to the lowest levels since 1988. Current management of elk numbers on the Buck Springs Allotment (Game Management Unit 5A) by AGFD are focusing on reductions in very specific areas in response to habitat needs (FEIS page 71).

Finding: The proposed action is limited to issuing a 10-year term grazing permit for livestock grazing on the Buck Springs Allotment. The FEIS and documents in the record disclose the analysis done to evaluate resource conditions on the allotment and the effects of the alternatives considered. The Deciding Officer properly assessed the issues, public input, and impacts to resources in her decision rationale. The impacts of elk were adequately considered in the analysis. Issues associated with unhealthy forest stand conditions are beyond the scope of the proposed action and analysis.

ISSUE 3: Numerous comments made in the DEIS were not addressed or received inadequate or generalized responses.

Contention: The appellants contend the Forest Service response in the FEIS has not addressed the issue of providing adequate disclosure of the process, rationale, assumptions, and site-specific data used to describe the affected environment and determine the environmental effects displayed for the various alternatives.

Response: The regulations for implementing the procedural provisions of the National Environmental Policy Act, 40 CFR Part 1502.1 requires a full and fair discussion of significant environmental impacts and disclosure of reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment. Following scoping and identification of significant issues, an interdisciplinary team formulated 8 alternatives, including alternative K that responded to the appellant's proposed Alternative J. These alternatives are discussed in detail in Chapter 2 of the FEIS. Chapter 4 of the FEIS discloses the environmental consequences of each alternative on vegetation, soil and water, air quality, wildlife, federally listed species, aquatic resources, recreation, cultural resources, social concerns and economic influences, wild and scenic rivers, and inventoried roadless areas. The environmental consequences are supported by numerous specialist reports found in the project record. Site specific surveys referenced in the DEIS to determine existing conditions on the allotment included, but were not limited to, hydrologic surveys, proper functioning condition surveys, terrestrial ecosystem surveys, cultural resource surveys, Mexican spotted owl surveys, aquatic habitat and fish surveys, watershed assessment surveys, elk surveys, water quality surveys, meadow surveys, and range condition and trend surveys. Appendix G in the FEIS contains a record of public comments, including the appellants, and responses to those comments.

Findings: The Deciding Officer appropriately defined the scope of the analysis, analyzed a range of reasonable alternatives within that scope, and disclosed the significant environmental effects. Changes made between the DEIS and FEIS based on public comments to the DEIS are disclosed in the Record of Decision.

ISSUE 4: Rest rotation grazing is not as suitable for the Buck Springs Allotment as rotational grazing.

Contention: The appellants contend the selected rest rotation grazing system is unsuitable for the rangeland resources on the Buck Springs Allotment and very well may do more damage than good by increasing the length of the livestock grazing periods while providing long periods of over rest on the remaining pastures especially for the southern pastures removed entirely from livestock grazing.

Response: The FEIS considered a range of management systems including rest rotation, deferred rotation, and systems relying almost entirely on herding to control livestock movements. The Responsible Official chose Alternative G that will implement a rest rotation system with the Battleground Unit grazed in even years and the Buck Springs Unit grazed in odd years. Approximately half of the pastures would be rested on a yearly basis. Based on the environmental analysis the Responsible Official concluded Alternative G is the most appropriate management approach because it will provide the most protection for riparian habitats and the threatened Little Colorado spinedace, requires the minimum number of range improvements, and allows minor indirect impacts to the threatened Little Colorado spinedace and critical habitat

without jeopardizing the continued existence of the species.

Findings: Other than the general allegation by the appellant, there is nothing in the record to support the appellant's contention that the selected rest rotation grazing system is unsuitable for the rangeland resources on the Buck Springs Allotment.

ISSUE 5: The analysis did not justify removal of one third of the allotment from grazing and a 66 percent reduction in stocking.

Contention: The analysis does not adequately justify the measures associated with removing one third of the allotment from grazing.

Response: The appellant clearly supports a grazing strategy consistent with Alternatives J, D, and K that rely heavily on herding to protect sensitive habitats and species. The 1999 Biological Opinion on Ongoing Grazing in Region 3 from the U.S. Fish and Wildlife Service (FWS), with subsequent amendments, allowed for 3 years of experimentation with herding on the allotment. Although herding showed some success it lacked the control to keep livestock out of sensitive habitats (FEIS pages 43; 373; ROD page 5). Since herding was not effective in protecting sensitive areas and Little Colorado spinedace most of the southern pastures that include headwater meadows and shallow drainages were excluded from grazing.

During the oral presentation the appellant expressed concern that the selected alternative will make it extremely difficult to manage livestock on the allotment. We acknowledge it will require more work than under current management. However, the encroachment of woody species (primarily ponderosa pine and mixed conifer) and a corresponding decrease in herbaceous forage, an increase in elk numbers, degraded watershed conditions, and the need to protect the Little Colorado spinedace resulted in the need to adjust management to be responsive to the aforementioned factors. The Deciding Officer concluded this required exclusion of most of the southern pastures from livestock grazing, resting half the pastures each year, and a corresponding adjustment in permitted numbers from 746 cow/calf pairs to 393 - 250 cow/calf pairs.

Finding: The record shows that the Forest Service and FWS worked collaboratively with the appellant to determine if herding could be used as a management tool to keep livestock out of sensitive habitats. Based on my review of the record, the analysis does justify resting half the pastures each year, the exclusion of grazing from sensitive areas, and stocking reductions. There is nothing in the record that would indicate the Deciding Officer was arbitrary or capricious in her decision to exclude the southern pastures from livestock use.

Issue 6: The economic impact of this decision was not adequately disclosed.

Contention A: The appellants contend that the economic impact of the selected alternative was never disclosed in the final environmental impact statement.

Response: Project level requirements for social and economic analyses are described in Forest Service Manual (FSM 1970). The responsible line officer determines the scope, appropriate level, and complexity of economic analysis needed (1970.6). The FEIS included economic feasibility as a significant issue (FEIS page 8). A summary of economic effects across all alternatives is displayed on page 46. An economic analysis on pages 166-174 includes payment

in lieu of taxes to the county, costs and benefits with indicators such as present net value and benefit/cost ratio, and the cost of range improvements for all alternatives.

Finding: The economic analysis is consistent with regulation and manual and handbook direction for project-level analysis and is not in violation of applicable laws, regulation, or policy.

DECISION

After review of the project record and your appeal, I agree with your conclusion during the oral presentation that the resource conditions on the Buck Springs Allotment are a result of encroachment by woody species and competition for forage by elk and livestock. I note the Environmental Impact Statement and Record of Decision document these factors and analyze them as issues along with the need to protect listed species, specifically the Little Colorado spinedace.

The Deciding Officer's decision addresses all these resource issues and selects an alternative designed to improve resource conditions over the long term. I appreciate your past efforts to manage the Buck Springs Allotment through herding, even though herding did not prove to be effective. I also acknowledge your concern that the selected management alternative will make movement of livestock more difficult.

Given the resource needs of the Buck Springs Allotment, I find that the Deciding Officer's decision best meets the management objectives and is in conformance with applicable laws, regulations, policies, and procedures. I encourage you to continue working with Ranger Sears in the management of the Buck Springs Allotment including the use of herding as a tool to improve livestock distribution under the new management system.

In accordance with 36 CFR 251.87(e), this decision will be forwarded to the Chief of the Forest Service for discretionary review. Following receipt of this decision the Chief will have 15 calendar days to decide if he will make a discretionary review. The Chief will notify you of his decision.

Sincerely,

LUCIA M. TURNER
Appeal Reviewing Officer, Deputy Regional Forester

cc: David M Stewart, Mailroom R3 Coconino, Larry Sears, Constance J Smith, Ralph Giffen