



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: August 14, 2003

Jeff Burgess
1922 Orion Street
Tempe, AZ 85283

**CERTIFIED MAIL – RETURN
RECEIPT REQUESTED**

RE: Appeal #03-03-00-0031-A215, Manila, Lyle Canyon, and Canelo Allotment Decision, Sierra Vista Ranger District, Coronado National Forest.

Dear Mr. Burgess:

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. You state that your appeal focuses “on Mr. Gunzel’s decision for the Lyle Canyon allotment management plan, which includes the Canelo allotment.” Therefore, the review and findings in this appeal are limited to these allotments.

BACKGROUND

District Ranger Gunzel issued a decision on May 13, 2003, for the Manila, Lyle Canyon, and Canelo Allotments. The decision resulted in the selection of the following alternative and authorization:

Manila Allotment, Alternative 3, which authorizes 80–90 head of cattle (cow/calf) to graze yearlong.

Lyle Canyon Allotment, Alternative 3, which authorizes 117–182 head of cattle (cow/calf) to graze yearlong.

Canelo Allotment, Alternative 3, which authorizes 102 head of cattle (cow/calf) to graze March 1 through April 30 annually.

The District Ranger is identified as the Responsible Official, whose decision is subject to administrative review under 36 CFR 215 appeal regulations. The record contains no documentation regarding informal resolution of this appeal.

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 found 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 with instructions the Responsible Official's decisions concerning the Manila, Lyle Canyon, and Canelo Allotments. The Responsible Official is directed to clarify the livestock numbers consulted on for the Lyle Canyon Allotment with the U.S. Fish and Wildlife Service and document that clarification in the record with a copy to appellants.

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: Mailroom R3 Coronado, Stephen L Gunzel, David M Stewart, Christina Gonzalez

REVIEW AND FINDINGS

of

Jeff Burgess'**Appeal #03-03-00-0031-A215****Manila, Lyle & Canelo Allotments****ISSUE 1:** The decision fails to comply with NEPA.

Contention: The appellant contends the decision fails to consider all reasonable alternatives as required by NEPA. The appellant says there was no consideration of alternatives with lower stocking rates where expenditures of large amounts of money on fences and watering facilities would not be necessary.

Response: The scoping and comment process generated a number of public letters asking for lower utilization, no grazing, or continued grazing. The Responsible Official approved the alternatives based on issues (PR #42). Page 11 of the Environmental Analysis (EA) (PR #61) describes the issues. The effects of stocking and utilization on soil, rangeland vegetation, and riparian area conditions were identified as Issue 1 and were addressed in the EA in the effects analysis (pp. 17-32). The alternatives include 1 - No Grazing/No Action, 2 - Continue Current Management, and 3 - the Proposed Action. Alternative 4 was added to address the possibility of a combined permit, (p. 13 of EA).

The costs versus benefits of proposed improvements were identified as Issue 6. Alternative 2 had less expenditure on improvements than either Alternative 3 (proposed action) or Alternative 4. Economics of the alternatives are addressed on pages 39-46 of the EA.

Finding: The Council of Environmental Quality (CEQ) regulations for NEPA do not require a certain number of alternatives to a proposed action. Alternatives are developed to address unresolved conflicts in a proposal (40 CFR 1501.2(c.)). The Responsible Official is to approve the list of significant issues used to develop alternatives to the proposed action (FSH 1909.15, section 10.4(5)). This EA meets the CEQ regulation requirements for development of alternatives.

ISSUE 2: The decision violates the Endangered Species Act.

Contention: The appellant contends the Endangered Species Act was violated because information provided to the U.S. Fish and Wildlife Service (USFWS) was inaccurate and incomplete. The appellant infers the USFWS did not have an accurate and complete list of federally listed species and that the action consulted on was different from the proposed action.

Response: The appellant provides no information as to which species and/or information may have been omitted from the analysis. The Biological Assessment (BA) (PR #100) includes an extensive list of species considered during the assessment process. This BA was accepted by the USFWS (PR #102). On June 19, 2002, the BA was supplemented for the change in status of the

Chiricahua leopard frog (PR #104). Concurrence with the BA (PR #100) was issued in a Biological Opinion from the USFWS (PR #116).

On page 3 of the Biological Opinion (PR #116) the following statement is found: “You requested formal consultation on May 29, 2002, for livestock grazing activities on the Canelo, Lyle Canyon, and Manila Allotments (2-21-02-f-201). Those proposed actions are analyzed herein.” The letter referred to (PR #101) included the BA (PR #100) as an attachment. The action consulted on in the BA (PR #100), the proposed action in the EA (PR #61), and the Decision Notice (PR #131) are consistent with one another and with the Biological Opinion. A table in the Biological Opinion shows a typographical error on the part of the USFWS concerning the permitted use numbers on the Lyle Canyon Allotment. This confusion in the numbers should be clarified for the record.

Finding: The requirements of the Endangered Species Act have been met through conclusion of formal consultation with the USFWS.

ISSUE 3: The decision violates the Federal Land Policy and Management Act.

Contention: The appellant contends the decision violates the multiple use doctrine because its primary effect if implemented, would be to provide a substantial subsidy to facilitate the expansion of a private commercial ranching operation.

Response: Under declaration of policy, Section 102(12) of the Federal Land Policy and Management Act, the United States Congress declares that, “...the public lands be managed in a manner which recognizes the Nation’s need for domestic sources of minerals, food, timber, and fiber from the public lands including implementation of the Mining and Minerals Policy Act of 1970...”

Finding: Domestic livestock grazing is a legitimate permitted activity on public lands. The decision does not violate the Federal Land Policy and Management Act.