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Date: April 28, 2003

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**CERTIFIED MAIL – RETURN
RECEIPT REQUESTED**

RE: Appeals #03-03-00-0019/0020-A215, Pinaleño Allotment Decisions (Marijilda, Hawk Hollow, White Streaks, Shingle Mill, Veach, Gillespie, Grant Creek), Safford Ranger District, Coronado National Forest

Dear Mr. Taylor:

This is my review decision concerning the appeals you filed regarding the Decision Notices and Findings of No Significant Impact that authorize grazing and implement the grazing management strategy on the above-named allotments. Your appeals have been consolidated into one response due to the similarity of your appeal issues.

BACKGROUND

District Ranger Asmus issued decisions on January 21, 2003, for the Pinaleño Allotments. The decisions resulted in the selection of the following alternatives and authorizations:

Veach Allotment, Alternative 3, which authorizes 275 head of yearlings to graze between December 1 and April 30, 2003 annually;

Gillespie Allotment, Alternative 3, which authorizes 47 head of cattle (cow/calf) to graze yearlong;

Grant Creek Allotment, Alternative 3, which authorizes 30 head of cattle (cow/calf) to graze yearlong;

Marijilda Allotment, Alternative 4, which authorizes 49 head of cattle (cow/calf) to graze from 7 to 9 months with a variable season;

Hawk Hollow Allotment, Alternative 3, which authorizes 33 head of cattle (cow/calf) to graze November 1 – March 31 annually;

White Streaks Allotment, Alternative 3, which authorizes 38 head of cattle (cow/calf) to graze November 1 – April 30 annually; and

Shingle Mill Allotment, Alternative 3, which authorizes 115 head of cattle (cow/calf) to graze November 1 – April 30 annually, and 20 head of horses to graze for 10 months.



The District Ranger is identified as the Responsible Official, whose decisions are 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 appeals. The record indicates that informal resolution was not reached.

My review of your appeals has been conducted in accordance with 36 CFR 215.17. I have reviewed the appeal records and the recommendation of the Appeal Reviewing Officer. My review decision incorporates the appeal records.

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 decisions 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 decisions concerning the Pinaleño 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

Enclosure

cc: David M Stewart, Christina Gonzalez, Mailroom R3 Coronado, George Asmus

REVIEW AND FINDINGS

of the Center for Biological Diversity

Appeals #03-03-00-0019/0020-A215

ISSUE 1: The Decision Notices are not tiered to a valid Forest Plan.

Contention: The appellant contends that 15 years have passed without the mandatory revision of the forest plan required under the NFMA; therefore, the forest plan is outdated with respect to grazing and no longer in compliance with NFMA.

Response: There are no statutes or regulations that describe an expiration date for Land and Resource Management Plans. The Coronado 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 2: There is no valid suitability analysis.

Contention: The appellant contends a suitability analysis must be done as part of this NEPA analysis.

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 (Coronado Forest 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 Coronado forest plan. The 36 CFR 219 regulations are not applicable in this case.

ISSUE 3: The proposal may overstock the allotments.

Contention: The appellant contends there is no grazing capacity analysis disclosed in the record. The appellant cites 36 CFR 222.3 (c)(1)(i) stating that “NFMA’s sustainable use requirement that permitted use be within capacity” cannot be met.

Response: 36 CFR 222.3 is found under Part 222, Range Management, Subpart A, Grazing and Livestock Use on the National Forest System. The appellant erroneously concludes these are

part of the National Forest Management Act Regulations, when, in fact, they are part of the Secretary of Agriculture Regulations authorizing the Chief of the Forest Service to develop, administer, and protect rangeland resources and to regulate grazing use of all kinds and classes of livestock on National Forest System lands. The passage cited by the appellant only requires the land to be available for grazing purposes and that capacity exists to graze specified numbers of livestock.

The record demonstrates the allotments have been well managed for an extended period of time. Monitoring data over the past 5-9 years indicates that soil compaction is minimal; utilization levels have been consistently light to moderate; trends in overall watershed conditions are positive; forage composition, density, and vigor have generally been rated as good; and that compliance with allotment management plans and annual operating instructions has been good. Additionally, in 1998, baseline data related to soils and vegetation was collected from 6 sites on the Veach Allotment, 6 sites on the Grant Creek Allotment, and 5 sites on the Gillespie Allotment. Data from these sites will be replicated to track changes over time (Gillespie, Veach, Grant Creek Docs. 13, 14, 15, 18, 23, 28, 29, 30, 38, 44, 54, 55, 57, 58, 59, 70, 75, 76, 78, 79, 83, 84) (Marijilda, Hawk Hollow, White Streaks, Shingle Mill Docs. 21, 22, 24, 26; 27, 28, 30, 43, 44, 46, 67, 91, 107, 108, 109, 110, 112, 113, 114, 124).

Finding: Neither the Secretary of Agriculture's Regulations nor Forest Service Policy require grazing capacity analyses where monitoring is validating past decisions and assumptions, and appropriate adjustments in management of allotments are made based on monitoring information. The record supports the proposed stocking rates.

ISSUE 4: Watershed conditions are not disclosed.

Contention: The appellant contends the Regional Guide requires that watersheds be analyzed and scored as being optimum, satisfactory, or unsatisfactory condition.

Response: The Regional Guide facilitated forest plan development. Requirements in the Regional Guide are reflected in the forest plan.

Finding: There is no requirement for project-level compliance with Regional Guides.

ISSUE 5: The Forest Service failed to implement Forest Plan grazing utilization limits.

Contention: The appellant contends the environmental assessments and decision notices fail to define what growing season is and what dormant season is in order to implement the plan amendment properly. The appellant states that the Forest Service failed to develop site-specific forage use levels in consultation with the Fish and Wildlife Service.

Response: The record demonstrates the Forest Service did consult with the Fish and Wildlife Service on site-specific forage use levels for all allotments in the two analyses for the Pinaleño Allotments (Gillespie, Veach, Grant Creek Docs. 72, 73) (Marijilda, Hawk Hollow, White Streaks, Shingle Mill Docs. 83, 99).

Finding: The 1996 Forest Plans, as amended, included forage utilization guidelines by range condition and management strategy to be used in the event that site-specific information is not available. Site-specific information was used to develop forage utilization standards; therefore, the 1996 Forest Plan Amendment has been implemented properly.

ISSUE 6: The analyses fail to quantify population trends for management indicator species.

Contention: The appellant contends population trends for management indicator species (MIS) have not been quantified in accordance with recent case law and that the analyses fail to show that continued grazing at planned levels will halt observed declines of MIS known to be affected by cattle.

Response: Population trends for MIS are discussed in the Management Indicator Species Report (Doc.100 for Marijilda, et al.) and the Biological Assessment (Doc. 74) for Veach, Gillespie, and Grant Creek allotments.

Management Indicator Species, especially migratory birds, are often affected by a host of factors outside the purview of the National Forest. Biologists analyze the effects of the project in the context of the Forest level population and habitat trends in accordance with 36 CFR 219.19. It would not be reasonable to expect a single project to halt a perceived decline in an individual species.

Finding: Population trends for MIS appropriate to the Pinaleño Allotments have been analyzed and disclosed. The standards set forth in the Pinaleño decisions have been met.

ISSUE 7: The Forest Service failed to choose the optimal alternatives.

Contention: The appellant contends, “The decisions do not meet the high standards of the Multiple Use Sustained Yield Act that the agency allow only that combination of uses that “will best meet the needs of the American people...without impairment of the productivity of the land, with consideration being given to the relative values of the various resources, and not necessarily the combination of uses that will give the greatest dollar return or the greatest unit output.” The appellant argues the Forest Service has not chosen the optimal alternative, which is to end grazing, based on special economic interests of the permittee.

Response: The Marijilda and Veach EA purpose and need statements are to authorize livestock grazing and provide long-term management direction through Allotment Management Plans (EAs, p. 1). A determination of agency policy of grazing on National Forest System lands is outside the scope of this decision. The Coronado Forest Plan allocated lands for grazing activity in Management Areas 1, 4, 7, and 9, balancing permitted livestock with grazing capacity (see Forest Plan Goals, p. 10, Coronado LRMP, 1986).

Finding: The alternatives meet the purpose and need statement and are consistent with Forest Plan objectives.

ISSUE 8: The range of alternatives is unreasonable.

Contention: The appellant contends the grazing alternatives are virtually indistinguishable in all cases, resulting in no alternatives that involve substantial reductions in grazing. The appeal goes on to say that prescribed fire should have been part of the alternatives.

Response: Three alternatives per allotment were analyzed for the Marijilda, et al., decision: no grazing, current management, proposed action. A fourth was added for analysis on Marijilda Allotment: the variable season/coordinated grazing schedule alternative (see EA, pp. 11-12). Permitted cow/calf months and season of use were among the variables considered between the action alternatives. A variety of treatments were analyzed for each allotment in this EA.

The Veach set of allotments had little or no variation in alternatives and little change in effects. In the Veach EA, no other issues surfaced during scoping that would develop more alternatives (see EA, p. 41 on how scoping information was used).

Different allotment boundaries are established by all of the proposed action alternatives in both EAs. Alternatives are different from each other and produce different effects.

The benefits of prescribed fire were disclosed in the vegetation effects and cumulative effects discussion (pp. 20, 21, 23, 24, of Marijilda EA; and Veach EA, pp. 15, 18, 19, 21). Prescribed fire actions are occurring separately (see Marijilda, et al., Documents 33 (burn plan) and 29 (reference to coordination of annual operating plans with burn plans). For the Veach EA, coordination with prescribed burns is occurring (Documents 6, 17, and 57). The Veach EA says to use annual operating plans to coordinate with burn plans to reduce prickly pear and catclaw density.

Finding: The Council of Environmental Quality (CEQ) regulations for NEPA (40 CFR 1500) do not require a certain number of alternatives and do not have content requirements (i.e., increased or decreased amount of activities) for alternatives to a proposed action. Alternatives are developed to address unresolved conflicts in a proposal (1501.2(c.)). These two EAs meet the CEQ regulation requirements on development of alternatives.

ISSUE 9: The Forest Service failed to take a hard look at the grazing actions as NEPA requires.

Contention: The appellant contends the analyses failed to consider the impacts to:

- 1) archaeological resources,
- 2) water quality,
- 3) soils, vegetation, and
- 4) recreation and
- 5) that the analyses failed to do an adequate economic analysis.

The appellant further contends there are no cumulative effects analyses and that livestock as a weed facilitator was not considered.

Response:

- 1) The analysis of archeological resources was very detailed and complete (see Marijilda, et al., EA, pp. 45-47, Documents 48, 50, 51, 62; and concurrence, Document 78). For the

Veach EA, the same applies (see EA, pp. 36-37, and Documents 46 and 47). The sacred site *Dzil nchaa si'an* is discussed in detail.

- 2) Water quality impacts were analyzed and disclosed. None of the downstream waters are “water quality limited” (Marijilda, et al., EA, p. 34) and water quality will be met by doing Best Management Practices (Documents 59 and 95). For Veach EA water discussion, see EA, p. 28.
- 3) Soils are reviewed in Marijilda, et al., EA, pp. 28-31, which shows a soil condition rating system for each area. The majority of the area is in satisfactory condition. Soil reviews are found in Documents 30, 53, and 16 (refers to North Taylor Canyon, which is mentioned specifically in the appeal).

The soils review in Veach EA is on pages 24-27. Soil reviews are in Documents 41 and 44. A similar conclusion was reached for soil and water effects in Veach EA as in Marijilda EA.

Riparian conditions were reviewed in the Marijilda EA, pp. 26-28, which disclosed that functional riparian areas would not be affected by grazing in any alternative. The riparian review is on pages 22-23 and 31-32 of the Veach EA, which says that grazing impacts will be limited. The riparian analysis is in Documents 7-12.

- 4) The recreation appeal point issue (referenced Veach EA) was focused on hunting use and not other types of recreation. The only recreation described for the Veach area is in allotment surveys, which note Forest Service trails and uses along riparian areas (Documents 7-10, 58, 59, 12, 55). The letter from Arizona Department of Game and Fish on the project concerns impacts to wildlife species, not economics (Document 68). The letter from Western Gamebird Alliance (Document 67) also focused on wildlife impacts. Wildlife impacts were discussed in detail in the EA.
- 5) Project-level requirements for social and economic analyses are found in Forest Service Manual (FSM 1970) and the Economic and Social Analysis Handbook (FSH 1909.17). The Responsible Official determines the scope, appropriate level and complexity of economic and social analysis needed (FSM 1970.6). Project economic analysis is found in the Marijilda, et al., EA, pp. 43-45, and further discussion in Comment Responses Document 150, Comments 7-10, 6-16, and 7-9. The Veach EA discussed economics on pp. 38-39 and in Documents 77, 82, and 86.
- 6) Cumulative effects analysis evaluated the past, present and reasonably foreseeable actions listed in the Marijilda, et al., EA on p. 11. Actions such as prescribed fire, water diversions, historic grazing, and exotic plant invasions, were addressed in various resource effects sections in the EA (pp. 11, 21, 23, 24, 26-18) and in the record (Documents 33, 59, 100, 93, 101, 62). The Veach EA addressed cumulative effects in the fire history discussion, weed discussion, and wildlife areas (see EA, pp. 12-13, 15, 19 and 28 and their supporting documents).
- 7) Document 88 in the Veach EA file is the noxious weed report for the Coronado National Forest. Cattle are not a main carrier of weeds, but use of weed seed and human dispersal are. Page 16 of Veach EA talks about inadvertent seeding of Sudan grass and seeding of Lehmann lovegrass in the past.

Finding: The Marijilda and Veach EAs meet the standards for analysis and disclosure for direct, indirect, and cumulative impacts of the alternatives.

ISSUE 10: The FONSIs are in error.

Contention: The appellant contends an environmental impact statement must be prepared for the allotment because ongoing grazing has already caused significant environmental impacts and may continue to do so. Five points were listed; context (referring to sacred site nearby of national significance), health and safety, (regarding water quality), controversy, precedent, and listed species impacts.

Response:

1. Heritage site FONSI references are project records 62 and 70 for the Marijilda, et al., EA and Document 37 for the Veach EA. No adverse effects to heritage resources or loss or destruction of significant cultural or historic resources will occur. Also see response to earlier appeal point 9.
2. Health and safety regarding water quality: The project is in compliance with State laws. See response to earlier appeal point 9.
3. Appellants claim controversy because some commenters were highly critical of and opposed to the continuation of livestock grazing. This opposition is part of a national policy discussion about grazing on National Forests and is not a scientific dispute about the methodology or results of the analysis. The effects of this project (continuation of grazing) are not highly controversial.
4. Precedence is said to occur here because this action may establish some path for future actions with significant effects, according to the appellants. Since the Rescission Act in 1995 established a nationwide schedule for NEPA analysis of grazing allotments, this EA project is actually in line with national direction, and it is not setting any new precedent or standard for other projects.
5. Listed species: the Biological Opinion issued by Fish and Wildlife Service referenced in the two FONSI, says that the project is not likely to jeopardize listed species or their habitat. The test of significance is the degree to which the action may adversely affect listed species or critical habitat. The Responsible Official, using analysis from the interdisciplinary team and from consultation, made the determination that an EIS was not needed in this case. The Fish and Wildlife Service's Biological Opinion shows that surveys are required for the Chiricahua leopard frog prior to stock tank modifications or maintenance in the allotments, and no critical habitat for Mexican spotted owl exists in the Veach Allotments. Therefore, the degree of adverse significant effects from the proposed actions can be considered low.

Finding: The two FONSI properly referenced the EAs and document records. The conclusion that an EIS is not necessary is consistent with the information in the record.