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Department of  
Agriculture

Forest  
Service

Coronado National Forest  
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File Code: 1570-1

Date: April 14, 2005

Bill Stern  
Forest Guardians  
312 Montezuma Avenue  
Suite A  
Santa Fe, NM 87501

**CERTIFIED MAIL – RETURN  
RECEIPT REQUESTED  
NUMBER: 70033110000285810540**

RE: Appeal #05-03-05-0001-A215, Jakes, Loral Canyon, North Reef, South Reef, Goodwin, and Kane Springs Allotments

Dear Mr. Stern:

This is my review decision on the appeal filed regarding the Decision Notice, Environmental Analysis, and Finding of No Significant Impact, which provides for grazing on the Jakes, Loral Canyon, North Reef, South Reef, Goodwin, and Kane Springs Allotments of the Safford Ranger District, Coronado National Forest. Together these allotments comprise approximately 22,600 acres as described below.

The Decision Notice provides that the Jakes, Laurel Canyon, North Reef, South Reef and Kane Springs Allotments season of use will be limited to winter season (October 1 to March 31), and that the season of use will be year-round on the Goodwin Allotment. The Decision further provides that authorized use will not exceed 372 head months on the Jakes Allotment, 300 head months on the Laurel Canyon and South Reef Allotments, 500 head months on the North Reef Allotment, 648 head months (54 cattle for 12 months) on the Goodwin Allotment, and 85 head months on the Kane Springs Allotment.

### **BACKGROUND**

Acting District Ranger Brian Dykstra signed a Decision Notice on January 18, 2005, and published it on January 23, 2005, for the Coronado National Forest. The Acting District Ranger is identified as the responsible official, whose decision is subject to administrative review under the appeal regulations at 36 CFR 215.

Pursuant to 36 CFR 215.17, an attempt was made to seek informal resolution of the appeal. The record indicates that informal resolution was not reached.

My review of this appeal was conducted in accordance with 36 CFR 215.18. I reviewed the appeal record, including 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) the decision logic and rationale were clearly described; (b) the selected alternative should accomplish the purpose and need, (c) the decision is



consistent with agency policy, direction, and supporting evidence; and (d) there was ample opportunity for public participation during the analysis and decision making processes.

**APPEAL DECISION**

After a detailed review of the record and the Appeal Reviewing Officer's recommendation, I affirm the responsible official's decision on the Jakes, Loral Canyon, North Reef, South Reef, Goodwin, and Kane Springs Allotments Project.

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

Sincerely,

/s/ Jeanine A. Derby  
JEANINE A. DERBY  
Forest Supervisor

Attachments (2):

1. Findings
2. Appeal Reviewing Officer letter (Steve Best)

cc: Constance J Smith, Stephen Best, Brian Dykstra, Bill Schuckert, David M Stewart, Berwyn Brown, Mailroom R3 Coronado

**REVIEW AND FINDINGS****Appeal #05-03-05-0001-A215****Forest Guardians****Jakes, Laural Canyon, North Reef, South Reef,  
Goodwin, and Kane Springs Allotments****Safford Ranger District  
Coronado National Forest****ISSUE 1: The Decision violates the NFMA.**

**Contention A:** The Forest Service violated the National Forest Management Act by continuing to allow cattle grazing on the allotment without first evaluating the allotment's suitability for grazing. The appellant contends the Forest Service must determine the suitability and potential capability of National Forest System lands in a forest planning analysis (36 CFR 219.3). Absent a suitability analysis, the appellant contends the Forest Service failed to discharge its obligation under the National Forest Management Act to take a hard look at each alternative; and, therefore, the choice of any alternative is premature.

**Response:** The National Forest Management Act 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 the National Forest Management Act in adopting the Land and Resource Management Plan for the Prescott National Forest, including its allocation of acreage suitable for grazing. Similarly, the Land and Resource Management Plan for the Coronado National Forest (Forest Plan) complies with the requirements outlined in 36 CFR 219.20 through the analysis process applied during its preparation.

The Affected Environment section (page 75) of the Final Environmental Impact Statement for the Land and Resource Management Plan for Coronado National Forest (Project Record #1) describes acres considered suitable for rangeland. Suitable acres are again discussed on page 104 of the Environmental Consequences section of the Final Environmental Impact Statement.

**Finding:** There is no requirement to conduct a suitability analysis when conducting a National Environmental Policy Act review and 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 adoption of a Land and Resource Management Plan for the Coronado National Forest.

**Contention B:** The Forest Service violated the National Forest Management Act's mandate to identify the alternative that maximizes public benefit. Livestock grazing, from strictly an economic efficiency standpoint, does not serve the broader public interest as shown in literature such as Loomis 1991, Souder 1997, and Forest Service publication GTR-INT-224. By failing to conduct a cost/benefit analysis for all uses of the land, rather than just for elk hunting and watching, the Forest Service failed to consider whether permitting grazing on this allotment makes economic sense despite the requirement of 36 CFR 219.3.

**Response:** Jakes, Laurel Canyon, North Reef, South Reef, Goodwin, and Kane Springs grazing allotments are developed to be consistent with the direction described in the Coronado Forest Plan. Project level requirements for social and economic analyses are described in Forest Service Manual 1970 and Forest Service Economic and Social Analysis Handbook 1909.17. The responsible line officer determines the scope, appropriate level, and complexity of economic and social analysis needed (FSM 1970.6).

The economic considerations of both alternatives were compared in terms of stocking, animal unit years, annual return per animal, gross revenue, grazing fees, and net annual revenue. Ranch analysis was based on data developed by Gao (1996) and reported in Ruyle, et al 2000. The social and economic analysis for this project is described on pages 28 to 29 of the Environmental Assessment (Project Record #38).

This project's purpose and need statement is to authorize livestock grazing and provide long-term management direction through Allotment Management Plans (Project Record, #38, p. 3).

**Finding:** The alternatives meet the purpose and need statement for economic analysis and are consistent with objectives stated in the Land and Resource Management Plan for the Coronado National Forest.

**ISSUE 2: The decision violates the National Forest Management Act requirement to maintain viable numbers of all species.**

**Contention A:** 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 populations of native species.

**Response:** Effects to wildlife species, including US Forest Service Region 3 Sensitive Species, are discussed in the Environmental Assessment (Project Record #38). The Environmental Assessment considered game species, management indicator species, predators, furbearers, bats, and songbirds (p. 13). Specific effects to sensitive species are disclosed on pages 18 to 19 of the Environmental Assessment. The Environmental Assessment also addresses management indicator species (pp. 16 to 18) and migratory birds (pp. 20 to 21).

Wildlife effects are addressed in the Wildlife Specialist Report (Project Record #22). This report serves as the Biological Evaluation for effects to sensitive species as required in FSM 2670. Effects to management indicator species are also found in this report. A Biological Assessment (Project Record #21) was prepared to disclose effects to listed species, and a letter of concurrence (Project Record #37) was obtained from the U.S. Fish and Wildlife Service. These documents determined that: (a) there would be no trend towards future listing for sensitive species affected by the project, (b) no effect to Forestwide population trend for management indicator species affected by the project, and (c) that the action would have either "no effect" or "may affect, but is not likely to adversely affect" listed species.

**Finding:** The effects analyses for sensitive species and other wildlife were conducted according to Forest Service procedures and policies and are consistent with direction in the Land and Resource Management Plan for the Coronado National Forest. The decision does not violate the National Forest Management Act requirement to maintain viable numbers of native and desired non-native species.

**Contention B:** Population survey data of management indicator species are needed to ensure the maintenance of minimum viable populations of wildlife. Adequate population monitoring has not been done for any management indicator specie or other species that may be affected by continued grazing on these allotments.

**Response:** Effects to management indicator species were disclosed in the Environmental Assessment (Project Record #38, pp. 16 to 18) and in the Wildlife Specialist Report (Project Record #22). The Management Indicator Species Report incorporated the Forest Management Indicator Species Status Report (Project Record #25, 2002), which included quantitative population data on management indicator species. The Project Record also includes an updated Forest Management Indicator Species Status Report (Project Record #42, 2005). The Environmental Assessment (Project Record #38) and Wildlife Specialist Report (Project Record #22) concluded that Forestwide population trend of management indicator species would not be affected by the action.

**Finding:** Quantitative population data on management indicator species were available and were used to analyze the effects of the action.

**ISSUE 3: The term permit issuance must be suspended until the Forest revises its Land and Resource Management Plan, the Forest Service develops a Renewable Resources Program, and publishes a new Final Environmental Impact Statement for revision.**

**Contention:** The appellant contends there is no legally adequate Resources Planning Act Program or land and resource management plan to which the term grazing permit issuance project can be tiered. The term permit must be suspended until the Forest publishes a new final environmental impact statement supporting a revised land and resource management plan.

**Response:** No statutes or regulations define an expiration date for the Forest Service Renewable Resource Program or land and resource management plans. A 2002 court decision in Wyoming upheld the use of the current land and resource management plan until revised (*Biodiversity Assoc. v. USFS*, decision September 30, 2002).

Also, language in the 2005 Appropriations Bill for the Forest Service (section 320, General Provisions) allows that:

“Prior to October 1, 2005, the Secretary of Agriculture shall not be considered to be in violation of subparagraph 6(f)(5)(A) of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1604(f)(5)(A)) solely because more than 15 years have passed without revision of the plan for a unit of the National Forest System. Nothing in this section exempts the Secretary from any other requirement of the Forest and Rangeland Renewable Resources Planning Act (16 U.S.C. 1600 et seq.) or any other law: Provided, that if the Secretary is not acting expeditiously and in good faith, within the funding available, to revise a plan for a unit of the National Forest System, this section shall be void with respect to such plan and a court of proper jurisdiction may order completion of the plan on an accelerated basis.”

The Land and Resource Management Plan for the Coronado National Forest will remain in effect until it is revised, consistent with the requirements of the National Forest Management Act and its implementing regulations.

**Finding:** The current Land and Resource Management Plan for the Coronado National Forest is in effect until a revision process is completed. There are no requirements to suspend activities until a revision process is completed.

**ISSUE 4: The project does not meet the requirements of the National Environmental Policy Act.**

**Contention A:** The appellant contends that a range of reasonable alternatives, as required by the National Environmental Policy Act implementing regulations, was not analyzed. The Environmental Assessment fails to take a hard look at potential effects of the proposed action and the no grazing alternative. By examining only one action alternative and refusing to analyze others that result in lower stocking rates, the Forest Service has violated the National Environmental Policy Act requirements to address a range of reasonable alternatives that not only emphasize different factors but also lead to differing results, and Forest Guardian's suggestion of a stocking reduction was too quickly dismissed.

**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 Environmental Assessment discusses two alternatives that were considered for detailed study. The Environmental Assessment includes a "no grazing" alternative, and a proposed action alternative which were studied in detail. Development of the proposed action and a no grazing alternative follows the direction in FSH 2209.13, 92.31. The proposed action in an adaptive management strategy shall set defined limits of what is allowed such as timing, intensity, frequency, and duration of livestock grazing that can be checked through monitoring (FSH 2209.13, 92, 23b – Adaptive Management).

The Environmental Assessment includes brief discussions of alternatives, as required by section 102(2)(E) of the National Environmental Policy Act, which states, "Study, develop and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources." The Environmental Assessment indicates that there were three issues identified (Project Record # 38, Environmental Assessment, p. 8) as being significant to the proposed action (40 CFR 1501.7(a)(3)). Issues identified and analyzed by alternative include: (1) grazing effects on wildlife; (2) grazing effects on vegetation condition; and (3) grazing effects on riparian area condition.

The purpose and need of the proposed action is to authorize grazing on the Jakes, Laurel Canyon, North Reef, South Reef, Goodwin and Kane Springs allotments in a manner consistent with Forest Service policy and the Land and Resource Management Plan for the Coronado National Forest, and to provide long-term management direction on grazing through allotment management plans (Project Record # 38, Environmental Assessment, p. 3).

The alternatives studied in detail meet the “purpose and need for action” and address the identified issues. Under Alternative 1 (No Action), no grazing would be authorized. Under Alternative 2 (Proposed Action), the season of use on the Goodwin Allotment will be year-round and the other allotments’ season of use will be the dormant winter-season. Specific numbers of livestock, entry, and exit dates will be identified in annual operating instructions, based on utilization levels, water and forage conditions, and management goals, but will not exceed the grazing limits for timing, duration, and intensity. Other Project Record documents related to alternative development include: Project Record # 12, page 5; Project Record # 16, Project Record # 36, and Project Record # 38, page 11.

**Finding:** The responsible official appropriately defined the scope of the analysis and analyzed a range of reasonable alternatives within that scope.

**Contention B:** The Forest Service has violated the National Environmental Policy Act because the Environmental Assessment fails to consider and adequately disclose the location and protocol for monitoring key forage utilization areas within the allotments. The appellant contends the Environmental Assessment must disclose the names, locations, forage utilization limits, and monitoring protocol for each and every key area within the allotments.

**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.

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 herbaceous utilization standards (percent by weight of annual available forage) on the Jakes, Laurel Canyon, North Reef, South Reef, and Kane Springs Allotments will be limited to 45 percent or less in designated key areas, with no more than 40 percent utilization on riparian trees and shrubs. Forage utilization in Wilderness Areas will be limited to 35 percent in accordance with direction in the Land and Resource Management Plan for the Coronado National Forest. Forage utilization on the Goodwin Allotment will be limited to 35 percent or less, with no more than 30 percent utilization on riparian trees and shrubs. When utilization standards have been met, livestock will be moved from individual pastures or from the allotment, as appropriate.

**Finding:** Utilization standards for the Jakes et al. Allotments 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 environmental assessment. As the selected alternative is implemented, all monitoring information will be available to the public.

**Contention C:** The Forest Service violated the National Environmental Policy Act by failing to consider and disclose the cumulative impacts of the proposed action. The appellant contends that the cumulative effects of the alternatives were not adequately addressed, considering past, present, and reasonably foreseeable activities, as required by the National Environmental Policy Act. Appellant states, “The Environmental Assessment contains virtually no analysis of cumulative effects.” The Environmental Assessment does not even attempt to catalog other activities occurring within the allotment’s boundaries.

**Response:** Cumulative effects result from the incremental impacts of the action when added to past, present, and reasonably foreseeable future actions (40 CFR 1508.7). Resource specialists considered the cumulative effects of a variety of past, present, and reasonably foreseeable future actions on their respective resources. The Environmental Assessment (Project Record # 38, pp. 13, 21 to 22, 24, 27 to 28, and 30) presents a historic account of grazing over the past century, information on historic and current fire suppression activities, and subsequent changes in species composition (forest succession).

The cumulative effects of cattle grazing on adjacent allotments, historic goat ranching, grazing use by other ungulates (elk and deer), and recreation use of trails within the allotments were also considered (Project Record # 38, Environmental Assessment, pp. 13, 15, 26, 28, and 31). Supplementary information contained in the project record (Project Record # 24, Soil, Water, and Air Report, pp. 16 to 18) supports the cumulative effects analysis presented in the Environmental Assessment.

**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.

**Contention D:** The Forest Service violated the National Environmental Policy Act because the Environmental Assessment fails to consider the full economic implications of this action. The Environmental Assessment fails to give the costs of expected improvements and other actions planned to increase grass cover. There is absolutely no information about the economic benefits of other uses of this allotment, such as recreation.

**Response:** Projects such as the Jakes et al. grazing allotments are developed to be consistent with the direction described in the Forest Plan. Project level requirements for social and economic analysis are described in Forest Service Manual 1970 and Forest Service Handbook 1909.17. The proposed action is the implementation of previously approved practices that are included in the current Land and Resource Management Plan for the Coronado National Forest. The responsible line officer determines the scope, appropriate level and complexity of economic and social analysis needed (FSM 1970.6).

The economic effects of the project were brought up as an issue in a letter received during scoping (Project Record #18) and were disclosed and discussed in the Environmental Assessment (Project Record #38, pp. 28 to 29). Economic considerations of both alternatives were compared in terms of stock, animal unit years, annual return per animal, gross revenue, grazing fees, and net annual revenue. Ranch analysis was based on data developed by Gao (1996) and reported in Ruyle et al (2000).

With respect to costs and benefits of recreation, the appropriate level for determining resource output tradeoffs is at the Forest level. The economic effects of wildlife use where there is a trade-off with other multiple uses must be made at the Forest Plan level.

**Finding:** The economic analysis is consistent with regulation and policy, as defined in Forest Service Manual and Handbook direction, for project-level decision making and is not in violation of applicable laws, regulations, or policy.

**Contention E:** The effects of grazing on riparian areas are not translated into determinations of effects on wildlife and migratory bird habitat. The Environmental Assessment fails to provide evidence that the proposed alternative will indeed restore riparian areas to meet land and resource management plan goals.

**Response:** The effects to riparian areas are summarized in the Environmental Assessment (Project Record #38) on page 12 (Table 2), and pages 23 to 24. The Environmental Assessment states (p. 23) that all riparian areas are functioning properly with stable or upward trends, and provides survey data used in this determination. The Environmental Assessment (p. 24) also states that the action alternative "...provides sufficient residual biomass to protect stream channels and riparian areas over time." This information, analysis, and effects determination is also found in the Soil, Water, and Air Specialist Report (Project Record #24, pp. 7 to 12). The Environmental Assessment (Project Record #38, p. 21) states that no effects to migratory birds are anticipated, and the Wildlife Specialist Report examines eight riparian bird species and determines that the action will not affect the species (Project Record #22, p. 2, Table 1).

**Finding:** Effects of the project on riparian areas were adequately disclosed for the responsible official to make a reasoned decision.

**ISSUE 5: The Forest Service has violated the National Environmental Policy Act because the Environmental Assessment fails to consider the implications of this action to Wilderness Areas.**

**Contention:** The Environmental Assessment fails to analyze the difference between the No Action and Proposed Alternatives in terms of visual qualities, wilderness qualities, wildlife viewing and habitat, etc. Direct effects to the Santa Teresa Wilderness Area from grazing are not discussed in violation of the National Environmental Policy Act.

**Response:** Grazing, as proposed, is consistent with the Wilderness Act (Section 4 (d)(4)(2) and direction in the Land and Resource Management Plan for the Coronado National Forest (Project Record #1, Land and Resource Management Plan for the Coronado National Forest, as amended, pp.79 to 82). As noted in the Environmental Assessment, the area receives very little recreational use (Project Record #38, p. 13). The Forest did not identify any conflicts with wilderness during the analysis (Project Record #38, p. 30). Public scoping did not identify a specific issue related to grazing in wilderness or to impacts to recreational opportunity; therefore, no direct, indirect, or cumulative effects are anticipated (Project Record # 36, p. 3).

In addition, as stated in the Environmental Assessment, the project area presently meets Land and Resource Management Plan standards for wilderness (Project Record #38, p. 30). Under the Proposed Action Alternative, utilization will be limited to 35 percent in wilderness in accordance with the Land and Resource Management Plan for the Coronado National Forest (Project Record

#38, p. 6). No new developments are proposed within the Wilderness Area. Primarily, the wilderness portions within allotment boundaries are upper elevation areas that are considered “not capable” for livestock grazing. These areas receive slight to no use. Typically, utilization does not exceed 35 percent within any of the project allotments. There are no quantifiable conflicts identified with either of the alternatives and, therefore, no direct, indirect, or cumulative effects are anticipated as a result of either alternative (Project Record # 38, p. 30). Visual and sound disturbance associated with livestock operations are localized and short-term impacts, primarily result in the displacement of wildlife (Project Record #38, p.15).

**Finding:** The effects of grazing on the Wilderness Area were analyzed following Land and Resource Management Plan guidelines, applicable regulations, and Manual and Handbook direction. The analysis is adequate for the context of the decision being made.

**ISSUE 6: The decision violates the Multiple Use Sustained Yield Act.**

**Contention:** The appellant alleges that the decision violates the Multiple Use 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 System Lands for the highest net public benefits was analyzed and decided upon in the preparation of the Land and Resource Management Plan for the Coronado National Forest. The Land and Resource Management Plan provides direction for management emphasis within the project area. Net public benefits were analyzed appropriately during preparation of the Land and Resource Management Plan for the Coronado National Forest and are outside the scope of project-level analysis.

With respect to the contention that the decision will continue to impair land productivity, the Environmental Assessment (Project Record # 38, pp. 13 to 31) analyzes the effects of the selected alternative on the various resources. The effects of the selected alternative are described as improving or having slight or gradual improvement or no change on the various land and water resources. The effects analysis clearly demonstrates improvement in land productivity.

The Decision Notice (Project Record # 40, p. 1), states that Alternative 2 is consistent with the management emphasis and direction for the Management Areas 1, 4, and 9 in the Land and Resource Management Plan for the Coronado National Forest and with the statutory and regulatory direction for rangeland management programs. Current management is presently achieving the desired condition for rangelands as defined in the Land and Resource Management Plan. The Decision Notice describes how the selected alternative will improve, balance uses, and maintain the various land, water, plant, and animal resources.

**Finding:** This decision will improve land productivity and is; therefore, consistent with the Multiple Use Sustained Yield Act.

**ISSUE 7: The environmental impact statement violates the Administrative Procedures Act.**

**Contention A:** Given the current degraded condition of the land due to historical and ongoing livestock grazing, the decision to continue to graze the land is inexplicable. Based on data in the Environmental Analysis, little is known about the effects this alternative would have on the ecosystem.

**Response:** The Environmental Assessment, Decision Notice, and documents in the record disclose the analysis undertaken to evaluate resource conditions on the allotments and the effects of alternatives considered.

**Finding:** In the Decision Notice for the Jakes et al. Allotments, the responsible official properly assessed the issues, public input, and impacts to resources in his decision rationale. The responsible official made a reasoned and informed decision based on the analysis and has not violated the Administrative Procedures Act.

**Contention B:** The use of Jakes Allotment as a winter season only allotment is not guaranteed without a fence along the Forest boundary. The previous consultation included a new fence along the boundary however the Environmental Assessment (p. 4) states that there is no fence along the boundary. Without a fence new consultation needs to take place.

**Response:** The Environmental Assessment (Project Record #38, p. 4) does state that no fence exists on the Forest boundary within the Jakes Allotment. However, the Environmental Assessment also states (p. 4) that use of the area is limited to winter months due to a lack of permanent water. The use of the allotment during winter was the justification for the “no effect” determination for the lesser long-nosed bat (Project Record #38, Environmental Assessment, p. 20; and Project Record #21, Biological Assessment, p. 9). The change in determination from the previous consultation was made based on modifications in the season of use (Project Record #21, p. 9). “No effect” determinations to listed species do not require consultation under Section 7(a)(2) of the Endangered Species Act of 1973, as amended.

**Finding:** Due to a “no effect” determination for listed species on the Jakes Allotment, no consultation was necessary. All procedures involving the Endangered Species Act of 1973, as amended, have been followed.

**Contention C:** Monitoring locations and times to detect unauthorized use are not well documented in the Environmental Assessment. It is arbitrary and capricious to assume that one visit every 3 years will detect unauthorized use or protect potential forage areas for the lesser long-nosed bat. The Biological Opinion must take into consideration the once every 3-year monitoring requirement.

**Response:** Formal consultation did not take place for the proposed action, so no Biological Opinion was issued. A “no effect” determination for the lesser long-nosed bat, based on season of use, was made for five of the six allotments (Project Record #21, p. 9). No consultation under Section 7(a)(2) of the Endangered Species Act of 1973, as amended, is required when Federal actions do not affect a listed species. A determination of “may affect, not likely to adversely affect” for the lesser long-nosed bat was made for the Goodwin Allotment (Project Record #21, pp. 9 to 10).

Monitoring of utilization compliance is discussed in the Biological Assessment (Project Record #21, p. 7) that was submitted to the U.S. Fish and Wildlife Service for concurrence. The Biological Assessment states that monitoring will occur “...at least [emphasis added] every third year, but in practice monitoring has occurred annually.” As required under Section 7(a)(2) of the Endangered Species Act of 1973, the Forest initiated consultation and received concurrence (Project Record #37) from the U.S. Fish and Wildlife Service on the determination for the lesser

long-nosed bat. This concurrence found that impacts to agaves from livestock grazing would be insignificant (Project Record #37, p. 3).

**Finding:** The level of monitoring and impacts to the lesser long-nosed bat were disclosed to the U.S. Fish and Wildlife Service as required under Section 7(a)(2) of the Endangered Species Act of 1973. All procedures regarding consultation were followed.



**File Code:** 1570-1

**Date:** March 28, 2005

**Route To:**

**Subject:** ARO, Appeal #05-03-05-0001-A215, Jakes, Laural Canyon, North Reef, South Reef, Goodwin, Kane Springs Allotment, Safford RD, Coronado NF

**To:** Appeal Deciding Officer, Coronado National Forest Supervisor

This is my review decision on the appeal filed regarding the Decision Notice (DN), Environmental Assessment (EA), and Finding of No Significant Impact (FONSI) concerning the above referenced project which provides for permitted grazing on;

**Jakes Allotment:** Authorized use will not exceed 372 Head Months (HM) from October 1-March 31.

**Laurel Canyon/South Reef Allotments:** Authorized use will not exceed 300 HM on each allotment (600 HM total) from October 1-March 31.

**North Reef Allotment:** Authorized use up to 500 HM from November 1-March 31.

**Goodwin Allotment:** Authorized use will not exceed 648 HM from November-October (Yearlong).

**Kane Springs Allotment:** Authorized use up to 85 HM from November 1-March 31.

Acting District Ranger Brian L. Dykstra signed the decision on January 18, 2005 and the legal notice was published on January 23, 2005. The District Ranger is herein termed as the Responsible Official, whose decision is subject to administrative review under the 36 CFR 215 appeal regulations.

### **Informal Disposition**

Pursuant to 36 CFR 215.17, an attempt was made to seek informal resolution of this appeal. The record reflects that informal resolution was not reached.

### **Review and Findings**

My review was conducted in accordance with 36 CFR 215.19 to ensure that the analysis and decision are in compliance with applicable laws, regulations, policies, and orders. The appeal records, including the appellant's issues and requests for relief have been thoroughly reviewed. Having reviewed the EA, decision, and the project record file, as required by 36 CFR 215.19(b), I conclude the following:



- 1) The decision clearly describes the actions to be taken in sufficient detail that the reader can easily understand what will occur as a result of the decision.
- 2) The selected alternative should accomplish the purpose and need established. The purpose and need stated in the EA reflect consistency with direction in the Forest Plan for the Coronado National Forest as amended.
- 3) The decision is consistent with policy, direction, and supporting evidence. The record contains documentation regarding resource conditions and the Responsible Official's decision documents are based on the record and reflect a reasonable conclusion.
- 4) The record reflects that the Responsible Official provided ample opportunity for public participation during the analysis and decision making process. The Responsible Official's efforts enabled interested publics the opportunity to comment and be involved in the site-specific proposal.

After considering the claims made by the appellant and reviewing the record, I found that the Responsible Official conducted a proper and public NEPA process that resulted in a decision that is consistent with the Coronado National Forest Plan. I found no violations of law, regulations, or Forest Service policy.

### **Recommendation**

I recommend that the Responsible Official's decision relating to this appeal be affirmed with respect to all of the appellant's contentions.

Sincerely,

/s/ M. Stephen Best  
M. STEPHEN BEST  
District Ranger

cc: Constance J Smith

Hard copy of this letter to be attached to ADO letter sent to appellants.