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File Code: 1570-1/2200
Date: July 10, 2003

Martin Taylor
Center For Biological Diversity
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**CERTIFIED MAIL – RETURN
RECEIPT REQUESTED**

RE: Appeals #03-03-00-0028/0029/0030-A215, Gila River, Little Rough, and Mangas Valley/Silverdale Allotment Decisions, Silver City Ranger District, Gila 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, which authorize grazing and implement the grazing management strategy on the above-named allotments. Due to the commonality of the issues and the structure of your appeals, this decision letter and review and findings will address all the allotments.

BACKGROUND

District Ranger Engel issued decisions on April 11, 2003, for the Gila River, Little Rough, and Mangas Valley/Silverdale Allotments. The decisions resulted in the selection of the following alternatives and authorizations:

Gila River Allotment, Alternative D, which authorizes up to 216 head of cattle (Cow/Calf), to graze 6 months (annually) during the dormant season in the uplands and one month during the dormant season in traps for purposes of gathering and pasture moves.

Little Rough Allotment, Alternative D, which authorizes up to 525 animal months of use, (Cow/Calf) to graze during the dormant season (November 1 – January 18 annually). The use of this allotment is dependent on the availability of water. Limited stocking due to the lack of water is expected.

Mangas Valley/Silverdale Allotment, Alternative D, which authorizes up to 261 head of cattle, (Cow/Calf) to graze yearlong.

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 these 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 found 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 aforementioned allotments, which authorize 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 Gila, Gerry Engel

REVIEW AND FINDINGS**of the****Center for Biological Diversity's****Appeals #03-03-00-0028/0029/0030-A215****Gila River, Mangas Valley/Silverdale, Little Rough Allotments**

ISSUE 1: The Forest Service violated the Endangered Species Act (ESA) because the decisions differ from the actions that were analyzed.

Contention: The appellant contends that the action, upon which consultation was completed, differs from the Responsible Official's decision on the Gila River Allotment and therefore violates ESA. The appellant says the ESA consultation considered 12,818 acres of full capacity range, but the proposed action reduces full capacity range and thus increases stocking density.

Response: The record reflects that the action is grazing of up to 216 head of cattle during the dormant season (approximately October through March) using a 2-pasture split herd, grazing management system (Docs. 203, 152, 112). This action is consistent with the Responsible Official's decision (Doc. 220). The 12,818 acres listed in the description of the action (Doc. 203) is based on a 1977 allotment analysis map (Gila River Grazing Capability Analysis). The appellant's reference to a reduction of full capacity range is based on Terrestrial Ecosystem Survey data used in 1998 to estimate the total acres of capacity range on the allotment (Gila River Grazing Capability Analysis). However, the record documents it was recommended, "that the 1997 'Full Capacity' areas remain as the area of this allotment considered as capable to be grazed in the future" (Gila River Grazing Capability Analysis). The recommendation was carried forward in the subsequent analysis, consultation, and decision.

Finding: The action, upon which consultation was completed, is consistent with the selected alternative. There has been no violation of the ESA. The selected alternative does not increase the stocking density over current management.

ISSUE 2: 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 Gila 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 3: There are no valid suitability analyses.

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

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 (Gila 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 forest plan.

ISSUE 4: Watershed conditions indicate restricted grazing.

Contention: The appellant contends the Regional Guide requires that watersheds be analyzed and scored as being in 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 range capability analyses are contrary to the USFS handbook.

Contention: The appellant contends Section 2209.21 of the Forest Service Handbook requires that soils classified as unstable, with natural soil loss rates that exceed tolerable soil loss rates to maintain soil productivity, be classified as no capability range. The appellant says the requirements of the handbook were not met when analyzing any of the allotments, because the capable acres analyzed exceed the acres of soils that are not classified unstable.

Response: The record demonstrates various sources were considered for each allotment when determining full capacity and potential capacity acres. For the Gila River Allotment, this included a 1982 Terrestrial Ecosystem Survey (TES), a 1998 TES, and a 1977 allotment analysis. A grazing capability analysis compared the three sets of data and recommended that full capacity acres, from the 1977 allotment analysis, be used as the basis for the current NEPA analysis. Factors considered in the 1977 analysis included forage production, amount of vegetative cover, slope, and active soil movement. The recommendation was based on documentation that vegetative ground cover is increasing and bare soil is decreasing on key areas on this allotment under current management (Gila River Grazing Capability Analysis). The record acknowledges there is steep terrain on the allotment with shallow soils and low site productivity. It is further acknowledged that most of these sites were overgrazed in the past, leading to varying levels of soil loss. However, allotment inspections indicate that the current

level of use is not causing further decline of these sites because use by permitted livestock is incidental.

For the Little Rough Allotment, the sources included a 1982 TES, a 1998 TES, and a 1969 allotment analysis. A grazing capability analysis compared the three sets of data and recommended that full capacity acres, from the 1969 allotment analysis, be used as the basis for the current NEPA analysis. Factors considered in the 1969 analysis included forage production, amount of vegetative cover, slope, and active soil movement. The recommendation was based on current information that indicates vegetative communities on this allotment are near natural condition and the fact that the allotment has been grazed very little over the past 30 years (Little Rough Grazing Capability Analysis).

For the Mangas Valley/Silverdale Allotment, the sources included a 1982 TES, a 1998 TES, and a 1981 allotment analysis. A grazing capability analysis compared the three sets of data and recommended full capacity acres, from the 1981 allotment analysis, be used as the basis for the current NEPA analysis. Factors considered in the 1981 analysis included forage production, amount of vegetative cover, slope, and active soil movement. The recommendation was based on documentation that indicates vegetative communities on this allotment are recovering at near natural rates under current management (Mangas Valley/Silverdale Grazing Capability Analysis).

For all the allotments discussed above, it was concluded that setting and monitoring proper utilization levels would ensure the continued productivity of capacity rangeland. All the above recommendations were carried forward in the subsequent analyses and decisions.

Finding: The rationale for using monitoring data and previous allotment analyses as the basis for determining acres of capacity range is documented in the project record. Additionally, soil condition (nutrient cycling, hydrologic function, stability) monitoring will be conducted every third year.

ISSUE 6: The range capacity analyses lack scientific integrity and are arbitrary and capricious.

Contention 6A: The appellant contends that estimates of capability and capacity in the project record ignore available data on unstable soils. The appellant concludes the Responsible Official failed to make the required rational connection between the facts found (the dominance of unstable soils on these allotments) and the choice made (to assign capability to unstable soils) in violation of the Forest Service Handbook and contrary to the advice of agency soil experts.

Response 6A: Rangeland management is an ongoing adaptive process where monitoring provides continued validation of decisions and provides additional information upon which future decisions will be based. The record demonstrates various sources were considered for each allotment when estimating grazing capacity. For the Gila River Allotment, this included: the use of Geographical Information System (GIS) technology that adjusts the estimated pounds of available forage based on percent allowable use, steepness of slopes and distance from water; a 1979 production-utilization study; and the comparison of actual use to trend data for soil and vegetative conditions. Comparison of average actual use over the past 20 years with transect data demonstrated that vegetative conditions have improved substantially from the 1960's, when stocking rates were 30 percent higher. The report concludes that the capacity of the Gila River

Allotment varies between 1200 and 1800 animal months, depending upon climatic conditions. The recommended stocking rate in the report is 1500 animal months, with the flexibility to be adjusted up or down depending on climatic conditions. This is consistent with the average stocking rate of the past 20 years (1556 animal months) (Gila River Grazing Capability Analysis).

In the recent past, the Little Rough Allotment was part of the Bullard Peak Allotment. Consequently, data such as production-utilization studies and actual use data are limited. The capacity estimate was developed using average stocking rates for similar vegetative communities on the Gila National Forest. This resulted in an estimated stocking rate of 529 animal months. The report concludes that the capacity of the Little Rough Allotment varies between 450 and 550 animal months, depending upon climatic conditions (Little Rough Grazing Capability Analysis).

GIS technology production-utilization studies conducted between 1978 and 1979, and the comparison of actual use to trend data for soil and vegetative conditions were the sources used on the Mangas Valley/Silverdale Allotment. Comparison of average actual use over the past 40 years with transect data demonstrated that both vegetative and soil conditions have improved substantially from the 1960's, when stocking rates were 20 percent higher. The report concludes that the capacity of the Mangas Valley/Silverdale Allotment varies between 3000 and 3400 animal months, depending upon climatic conditions. The recommended stocking rate in the report is 3000 animal months, with the flexibility to be adjusted up or down depending on climatic conditions. This is consistent with the average stocking rate of the past 10 years (3025 animal months; Mangas Valley/Silverdale Grazing Capability Analysis).

Estimating available forage capacity for large ungulates is not an exact science. To account for this, the Forest Service establishes conservative forage utilization standards to insure that not only are plant vigor and health sustained (herbaceous and woody species), but sufficient residual plant material is left to meet other resource needs such as soil protection, cover and food requirements for wildlife, and watershed health. These standards also account for all large ungulate use (wild and domestic). Recurring monitoring provides information for managers to move livestock before unacceptable damage occurs to soil and water resources and to adjust utilization standards, if necessary, on a case-by-case basis. The record reflects that utilization standards have been established for the three allotments and a monitoring plan has been developed as part of the analyses (Docs. 203, 218, 219, 220).

As noted under Issue 5 above, the record demonstrates various sources were considered for each allotment when determining full capacity and potential capacity acres. The appellant implies the Responsible Official should have used TES data as the sole basis for determining forage capacity. The Responsible Official chose to rely on monitoring and trends in soil and vegetative conditions, realizing there were differences of opinion on the Interdisciplinary Team in terms of which source of information was the most reliable.

Finding: The Responsible Official considered many sources of science-based capacity prediction methodologies and tempered them with on-the-ground knowledge from monitoring and field inspections to determine capacity acres. The decisions related to estimating grazing capacity are not arbitrary and capricious.

Contention 6B: The appellant contends the findings of no effect on the Little Rough and Mangas Valley/Silverdale Allotments and no adverse affect on the Gila River Allotment (on critical habitat for loach and spikedace minnows) are based on misrepresentations, contrary to the evidence before the agency, and therefore arbitrary and capricious, in violation of the Administrative Procedures Act. The appellant says that blaming poor soils on past rather than recent or present grazing on the Gila River Allotment and concluding that sediment that may come from upland areas of the Little Rough and Mangas Valley/Silverdale Allotments will be held in ephemeral drainages of these allotments is not supported by empirical evidence. The appellant concludes that sediment deposition in streambeds is known to be a principal factor in limiting reproductive success of loach and spikedace minnows and that, despite exclosure of riparian areas along the Gila River, loach and spikedace minnow numbers have not recovered in recent years.

Response 6B: Spikedace and loach minnow numbers have increased significantly since 1996. Forest Service monitoring data indicate the average number of spikedace in 1999 and 2000 is up nearly 300% over 1996 and 1997 numbers. For the loach minnow, the average number for 1999 and 2000 is approximately 2000% greater than 1996 and 1997 numbers.

Finding: A journeyman-level fisheries biologist concluded the proposed actions may affect but would not likely adversely affect either the loach or spikedace minnows or their critical habitat. The U.S. Fish and Wildlife Service concurred with the findings. These findings are not arbitrary and capricious.

ISSUE 7: The environmental assessment fails to take a hard look at impacts.

Contention: The appellant asserts the effects disclosures on vegetation, riparian areas, wildlife, global warming, interdependent actions, and the socio-economic structure do not constitute a hard look as required by NEPA.

Response: The record provides evidence that the Responsible Official took a hard look at the environmental impacts associated with these projects. The environmental assessment (EA, Doc. 203) describes in a clear and thorough narrative the effects to vegetation, considering changes in species composition, frequency of species occurrence, total plant density, seral stage compared to the potential natural community, and individual plant health and vigor (EA, pp. 29-34). The analysis uses commonly accepted methods that are consistent with agency direction, as referenced in the EA. Similarly, pages 34-36 of the EA adequately disclose effects to riparian areas. The EA devotes nearly 19 pages of narrative (pp. 36-54) to describing effects on wildlife, including consideration of federally listed species and management indicator species, as well as other grazing and non-grazing wildlife species. Pages 61 to 76 of the EA disclose effects to relevant social and economic factors, using commonly accepted methods for estimating effects to permittee and agency costs and benefits, local jobs, payments to counties, social and cultural conditions in the local communities, and other social effects. Effects on global warming are not within the defined scope of this site-specific grazing management project or the issues associated with this project, as identified in Chapter I of the EA. The discussion of environmental consequences is consistent with the issues identified (EA, pp. 29-79), in accordance with applicable Council on Environmental Quality regulations.

The interdependent actions cited by the appellant relate to actions on private lands. The EA states that private lands managed separately from the National Forest System Lands are not

analyzed. Grazing of non-federal lands is not dependent on the federal action. Actions on these private lands are not interdependent parts of a larger action. Private lands used in conjunction with the Mangas Valley/Silverdale Allotment are included in the effects analysis (EA, p. 23).

Finding: The EA takes a “hard look” and adequately discloses the environmental effects in accordance with NEPA regulations.

ISSUE 8: The Forest Service failed to choose the optimal alternative.

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 says the Forest Service has not chosen the optimal alternative; that is, to end grazing, based on special economic interests of the permittee. The appellant asserts that the no grazing alternative is superior to the preferred grazing alternatives for all resources except the permittee’s income.

Response: The EA purpose and need for action is to authorize grazing on the allotments, consistent with the Forest Plan direction (EA, p.16). The overall desired future condition is to have soil and watershed conditions in an upward trend within the 10-year permit period (EA, p. 17). There were three alternatives including the selected one that would have continued the improvement of resource considerations on the allotment while providing grazing opportunities (Decision Notice, p. 2). A determination of agency policy of grazing on National Forest System lands is outside the scope of this decision. The Gila Forest Plan allocated lands for grazing activity, balancing permitted livestock with grazing capacity (Record of Decision, Gila LRMP, 1985).

Finding: The selected alternative meets the purpose and need for action and is consistent with Forest Plan objectives and is in compliance with the Multiple Use Sustained Yield Act.

ISSUE 9: The findings of no significant impacts for the three decisions are contrary to NEPA.

Contention: The appellant contends that there is sufficient controversy to trigger the requirement to prepare an environmental impact statement for each of the three allotments.

Response: The Responsible Official determined that “the effects on the quality of the human environment are not likely to be highly controversial” (Decision Notice and Finding of No Significant Impact documents, Docs. 218, 219, 220). The documents state that this determination is based on a review of the EA. In addition, based on the EA and the 10 points evaluated in the Finding of No Significant Impact, the Responsible Official determined that the projects are not major federal actions and will not significantly affect the quality of the human environment; therefore, no environmental impact statement is necessary. There is no evidence in the records that indicates there would be significant effects from the selected alternatives on any of these grazing allotments that would trigger an EIS.

Finding: The Responsible Official appropriately found that there were not likely to be any significant effects or sufficient controversy regarding the effects, to necessitate the preparation of an EIS.