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Date: December 8, 2003

Ms. Laurie Fulkerson
Forest Guardians
312 Montezuma Street, Suite A
Santa Fe, NM 87501

**CERTIFIED MAIL -
RETURN RECEIPT REQUESTED**
Receipt Number: 7002-2030-0005-8833-8610

RE: Appeal #04-03-06-0001-A215, Centerfire Allotment Decision, Quemado Ranger District, Gila National Forest

Dear Ms. Fulkerson:

This is my review decision concerning the appeal filed regarding the Decision Notice and Finding of No Significant Impact, which authorizes grazing and implements the grazing management strategy on the above-named allotment.

BACKGROUND

District Ranger Stevenson issued a decision on September 10, 2003, for the Centerfire Allotment. The decision resulted in the selection of the following alternative and authorized 139 head of cattle to graze yearlong on the Centerfire Allotment.

The District Ranger is identified as the Responsible Official, whose decision is subject to administrative review under 36 CFR 215 appeal regulations. Pursuant to 36 CFR 215.17, an attempt was made to seek informal resolution of your appeal. The record indicates that informal resolution was not reached.

My review of this appeal has been conducted in accordance with 36 CFR 215.18. I have reviewed the appeal record and the recommendation of the Appeal Reviewing Officer. My review decision incorporates the appeal record.

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 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 the Responsible Official's decision concerning the Centerfire Allotment, 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/ Marcia R. Andre
MARCIA R. ANDRE
Forest Supervisor
Appeal Deciding Officer

Enclosure

cc: Christina Gonzalez, Berwyn Brown, Mailroom R3 Gila, David M Stewart, Mailroom R3, Janice S Stevenson

REVIEW AND FINDINGS

of

Forest Guardians'

Appeal #04-03-06-0001-A215

ISSUE 1: The Forest Service violated NFMA by continuing to allow cattle grazing on the allotment without first evaluating the allotment's suitability for grazing. Therefore, the choice of any alternative is premature.

Contention: The appellant contends that NFMA was violated because the Responsible Official failed to evaluate the allotment's suitability for grazing, "...the Forest Service must determine in forest planning the suitability and potential capability of the National Forest System lands...36 CFR, Sec. [3]19.20." Absent a suitability analysis, the appellant contends that the Forest Service failed to discharge its obligation under NFMA to take a hard look at each alternative; and, therefore, the decision is premature.

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. The 36 CFR 219 regulations are not applicable in this case; therefore, the decision is not premature.

ISSUE 2: The decision violates the Gila National Forest Plan and the Regional Guide by failing to manage riparian areas to achieve recovery.

Contention: The appellant asserts that the decision fails to make the health of riparian areas a priority and in so doing violates both the forest plan and Regional Guide.

Response: The Regional Guide facilitated forest plan development. Requirements in the Regional Guide are reflected in the forest plan. There is no requirement for project-level compliance with Regional Guides.

Riparian health was a prime consideration during the planning of this project. The potential impact to riparian conditions was identified as a significant issue (PR #57). The alternative selected responds to the riparian issue by requiring management changes and structural measures that will have a positive effect on improving ground cover, reducing erosion, and protecting riparian areas (PR #77).

Finding: Continued riparian improvement is ensured under this decision, and there is no violation of the Gila National Forest Plan or the Regional Guide.

ISSUE 3: The decision violates the NFMA requirement to maintain viable numbers of all species.

Contention: 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 numbers. The appellant believes there is a lack of management for riparian habitat and that the Forest Service must provide protection for riparian obligate species. In particular, the appellant believes that domestic livestock production threatens the viability of the Southwestern willow flycatcher, the black hawk, the Mexican spotted owl, the Mexican garter snake, the narrow-headed garter snake, the Chiricahua leopard frog, and the Arizona southwestern toad. The appellant contends that only a cessation of grazing in these watersheds, combined with active restoration work, will adequately provide for the minimum habitat needs for these species.

Response: The EA (PR #57), Wildlife Assessment (PR #53), and MIS evaluation (PR #52) analyzed the effects to Federally listed species, Management Indicator Species, and Region 3 Regional Forester Sensitive Species occurring on the allotment, including some of the species listed by the appellant, species list (PR #11 & #14). No threat to viability was determined as a probable result of implementing the proposed action. The Mexican garter snake does not occur on the allotment or within the vicinity of the proposed action.

The proposed action “May affect,” but, is “Not likely to adversely affect” the Mexican spotted owl, the loach minnow and loach minnow critical habitat. The US Fish and Wildlife Service concurred with these determinations on August 8, 2003 (PR #64).

Finding: Based on the review of the project record, the Forest did not violate the NFMA requirement to maintain viable numbers of all species.

ISSUE 4: Population survey data of Management Indicator Species is needed to ensure the maintenance of minimum viable populations of wildlife.

Contention: The appellant asserts that since the Forest Service lacks quantitative inventory data on many, if not all, MIS in the planning area and the forest as a whole and the scant data that it does have indicates some species are declining, the agency’s decision is arbitrary and capricious.

Response: Data from which the MIS analysis was conducted is available at the Gila National Forest Supervisor’s Office within the Gila Management Indicator Species Report, included by reference. Discussions on the possible effects to MIS from the proposed action are included in the Wildlife Assessment (PR #53), Quemado MIS evaluation (PR #52), and summarized within the EA (PR #57).

The CFR 36.219.19 regulations do not require population data at the project level, nor do they require all trends to be stable or up. Data at the Forest level is adequate to determine general population trends and ensure that viable populations are maintained.

Finding: The Forest completed an analysis of MIS that was sufficient to ensure that minimum viable populations would be maintained.

ISSUE 5: The decision violates NFMA consistency and viability provisions by failing to adequately protect the Northern goshawk.

Contention: The allotment provides nesting or potential habitat for the Northern goshawk, yet fails to establish key foraging areas that limit utilization to an average of 20 percent.

Response: The guidelines referred to by the appellant are management recommendations. Grazing utilization guidelines for the proposed action are found in the EA (PR #57, p. 13). Analysis of effects on the Northern goshawk from the proposed action are discussed in the Wildlife Assessment (PR #53), summarized in the EA (PR #57, pp. 53-54), and are in compliance with the Forest Plan as amended.

Finding: The decision is consistent with NFMA consistency and viability provisions for the Northern goshawk.

ISSUE 6: The Centerfire term permit issuance must be suspended until the Gila National Forest revises its land and resource management plan and until the Forest Service develops a renewable resources program.

Contention: The appellant contends, "...there is no legally adequate RPA program or land and resource management plan to which the Centerfire term grazing permit issuance project can be tiered."

Response: There are no statutes or regulations that describe an expiration date for the Forest Service Renewable Resource Program or Land and Resource Management Plans. A recent court decision in Wyoming upheld the use of the current Plan until revised (Biodiversity Assoc. v. USFS, decision September 30, 2002). Regulations (36 CFR 219.35g) spell out that a revision schedule for each Forest Plan will be published. 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 7: The Forest Service violated NEPA by failing to analyze a reasonable range of alternatives.

Contention: The appellant contends that a range of reasonable alternatives, as required by NEPA implementing regulations, was not analyzed.

Response: 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). There were three significant issues identified in the EA (PR #57, p. 9), social-economic effects, riparian habitat, and cost of range developments. Four alternatives were evaluated (pp. 10-20), and the riparian issue was addressed in its own alternative. The social-economic issue and the cost of range developments were analyzed in all four alternatives. There was a range of livestock numbers proposed in the alternatives to the decision maker, from no grazing to the current no change, the proposed action, and the riparian alternative (PR #71, Response to Comments #3 FG).

Finding: The Responsible Official appropriately defined the scope of the analysis and analyzed a range of reasonable alternatives within that scope.

ISSUE 8: The Forest Service violated NEPA, because the EA fails to consider and disclose adequately the location and protocol for monitoring key forage utilization areas within the allotment.

Contention: The appellant contends the EA must disclose the names, locations, forage utilization limits, and monitoring protocol for each and every key area within the allotment.

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. Southwestern Region Rangeland Management Specialists, Ecologists, and other scientists have developed these guidelines over a period of 50 years.

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.

Utilization standards for herbaceous forage and woody vegetation are documented by key areas in both the environmental assessment and the Decision Notice (PR #57; #77).

Finding: Utilization standards for the Centerfire Allotment 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 EA. As the selected alternative is implemented, all monitoring information will be available to the public.

ISSUE 9: The Forest Service violated NEPA by failing to consider and disclose the cumulative impacts of the proposed action.

Contention: The appellant contends that the cumulative effects of the alternatives were not adequately addressed, considering past, present, and reasonably foreseeable activities, as required by NEPA. Appellant states, “the EA contains virtually no analysis of cumulative effects...”

Response: Cumulative effects were addressed throughout the EA (PR #57). On the first page of the EA, adjacent allotments were described, as well as private land areas within a larger watershed boundary used for analysis. A short list of past, present, and reasonably foreseeable activities was outlined on page 25 of the EA. Past actions on page 26 included timber harvest, green firewood sales, and residential development. Cumulative effects of road maintenance, road use, and fire suppression on noxious weed spread were analyzed on page 41. Cumulative effects at the watershed scale were identified on pages 54-60. These included thinning small pines, road maintenance, off-road vehicle use, New Mexico Department of Game and Fish activities, wildfires and prescribed fires, changes in livestock numbers on adjacent allotments, construction and maintenance of watershed structures, riparian enhancement projects, and

development of wildlife waters. Finally, the effects of recreation and hunting use were disclosed on page 74 of the EA.

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 more than adequate to inform the Responsible Official and for the purpose of determining significance and the need for an EIS.

ISSUE 10: The EA violates the Clean Water Act.

Contention: The appellant contends that the Forest Service failed to require the grazing permit applicant to obtain water quality certification from the State of Arizona.

Response: There is no requirement to obtain certification from the State of Arizona for activities that occur in New Mexico.

Finding: Appropriate procedures were followed and adequate mitigation is planned for the project area. There will be no violation of the Clean Water Act.

ISSUE 11: The decision violates the Multiple Use and Sustained Yield Act.

Contention: The appellant alleges that the decision violates the Multiple Use and Sustained Yield Act by failing to manage for the highest public benefit. The appellant also states that the decision will continue to impair land productivity.

Response: Management of National Forest Lands for the highest net public benefits was analyzed and decided upon in the preparation of the Gila National Forest Plan. The forest plan provides direction for management emphasis within the project area. Net public benefits were analyzed appropriately during the forest plan's preparation, and are outside the scope of project-level analysis.

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

ISSUE 12: The EA violates the Administrative Procedures Act.

Contention: The appellant asserts, "There exists as yet no information which would indicate that the proposed alternative will remedy the admitted problems on this allotment."

Response: The EA and documents in the record disclose the analysis done to evaluate resource conditions on the allotment and the effects of alternatives considered. In the DN/FONSI, the Responsible Official properly assessed the issues, public input, and impacts to resources in Centerfire decision rationale.

Finding: The Responsible Official made a reasoned and informed decision based on the analysis and has not violated the Administrative Procedures Act.