



File Code: 1570-1

Date: January 3, 2005

JEFF BURGESS
P O BOX 20862
PHOENIX , AZ 85036

eCERTIFIED MAIL - RRR
91 7108 2133 3930 4157 7710

RE: Appeal #05-03-07-0002-A215, Homestead/Davenport Allotments Grazing Authorization

Dear Mr. Burgess:

This is my review decision on the appeal filed regarding the Decision Notice (DN), Environmental Analysis (EA), and Finding of No Significant Impact (FONSI) on the above-referenced project, which provides for permitted grazing of 145 cattle from May 16 to October 31.

BACKGROUND

District Ranger Stephen Best made a decision on September 30, 2004 which was published October 5, 2004, on the Homestead/Davenport Allotments for the Kaibab National Forest on this project. 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 the 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, 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 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; and d) public participation and response to comments were adequate. The Appeal Reviewing Officer recommended that the Forest MIS report referenced be added to the project record.

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 Homestead/Davenport Allotments Grazing Authorization with the following instructions:



- 1) The December 2002 Forest MIS report that is referenced in the Wildlife Specialist Report will be added to the project record.
- 2) The range analysis calculations for 1998-1999 for both allotments referenced as available at the District (PR#44 p.2, PR#18) will be added to the project record as background data.
- 3) The District will include any and all waterfowl observation data and pronghorn observation data not already included in PR#78.
- 4) The District will include the appropriate references in the project record that were used for vegetative cover heights preferred by both burrowing owls and chestnut-collared larkspurs in the analysis.

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

Sincerely,

/s/ Michael R. Williams
MICHAEL R. WILLIAMS
Forest Supervisor

cc: David M Stewart, Constance J Smith, Berwyn Brown, Mailroom R3 Kaibab, Cecilia R Seesholtz, Charles F Ernst, Stephen Best

Enclosures (2)

REVIEW AND FINDINGS

of

Jeff Burgess'

Appeal #05-03-07-0002-A215

Homestead/Davenport Allotments

ISSUE 1: The decision fails to comply with Executive Order 11990 Protection of Wetlands.

Contention A: The appellant believes this decision violates the E.O. because it does not prohibit livestock grazing in Depot Lake and Dry Lake when they are wet, although there is a prohibition of grazing on Davenport Lake. Building the 1/3 mile fence to split the existing Depot Pasture will have the effect of increasing livestock use and degradation in Depot Lake.

Response: Executive Order 11990 requires that federal agencies take action to “avoid to the extent possible the long and short-term adverse impacts associated with the destruction or modification of wetlands” (PR# 85, p.22). The selected alternative provides mitigation and management designed to minimize effects of livestock grazing on the ephemeral wetlands of all three lakes, commensurate with their associated wetland ecologic values. The decision eliminates grazing of the Davenport Lake area when this ephemeral lake is wet (PR #84 p. 2, PR #85 pp. 10-11). Grazing in Dry Lake will be prohibited after the utilization rate has been reached (PR# 84, p.2, PR#90), while grazing in the Depot Lake area is controlled through a short-rotation (15-20 days in 2 out of 3 years) grazing strategy (PR# 85, p.8).

Finding: Long and short-term adverse impacts have been avoided and compliance with the requirements of E.O. 11990 has been assured.

ISSUE 2: The project does not meet the requirements of NEPA.

Contention A: The decision fails to adequately analyze the ecological effects of the stock tanks located in Davenport Lake and Dry Lake. Appellant disagrees with assessment that stock tanks don't have ongoing significant adverse impacts. There was no analysis of potential ecological benefits of removing the stock tanks from the lakes and there was no alternative that included a proposal to remove at least one of the tanks.

Response: The decision does not propose construction of any new stock tanks (PR# 84). The stock tanks are appropriately described as part of the existing condition (PR#85 p.22) and additional analysis was done to evaluate the magnitude of their effect on ecologic and hydrologic function of the wetlands to evaluate cumulative effects (PR# 80). The record provides evidence that the 75-100 year-old stock tanks do not have a significant effect that would warrant their removal as part of the proposed action (PR# 80, PR# 85, p. 22). Experts from the Natural Resource Conservation Service assisted with the analysis and concurred with the assessment (PR# 80). Since the issue was not significant, no alternatives were developed to address it (PR# 85, p. 5)

Finding: The analysis of environmental affects and development of alternatives was conducted in accordance with NEPA requirements.



United States
Department of
Agriculture

Forest
Service

Southwestern Region 3
Carson National Forest
Camino Real Ranger District

P.O. Box 68
Penasco, NM 87553
505-587-2255
FAX 505-758-6236

File Code: 1570-1

Date: December 17, 2004

Route To:

Subject: ARO, Appeal #05-03-07-0001-A215, Homestead/Davenport Allotments Grazing Authorization

To:

This is my review decision on the appeal filed regarding the Decision Notice (DN), Environmental Analysis (EA), and Finding of No Significant Impact (FONSI) on the above-referenced project, which provides for permitted grazing of 125 cattle from May 1 to October 31 on the Homestead Allotment and 145 cattle from May 16 to October 31 on the Davenport Allotment

District Ranger Stephen Best made a decision on September 30, 2004 and published October 5, 2004, on the Homestead/Davenport Allotments for the Kaibab National Forest on this project. The District Ranger is identified as the Responsible Official, whose decision is subject to administrative review under 36 CFR § 215 appeal regulations.

Review and Findings

My review of this appeal was conducted in accordance with 36 CFR § 215.19. The appeal record, including the appellant's issues and request for relief has been thoroughly reviewed. Having reviewed the Environmental Assessment (EA), DN/FONSI, and the project record file, as required by 36 CFR 215.19(b), I conclude the following:

1. The purpose and need was clear and the Proposed Action was appropriate and consistent with the purpose and need.
2. The scoping and public involvement process was appropriate, responsive to comments and suggestions from interested parties, and effective in developing alternatives and evaluating effects.
3. The analysis and decisions documented in the Record are consistent with national policy, agency objectives, and Forest Plan direction.

After considering the claims made by the appellants and reviewing the record, I found the Responsible Official conducted a proper and public NEPA process that resulted in decision that are consistent with national policy, agency objectives, and Forest Plan direction with the following clarification:

The Forest MIS assessment, dated December 2002, should be added to the Record.



Recommendation

I recommend the Responsible Official's decisions relating to these appeals be affirmed with respect to all of the appellant's contentions.

Sincerely,

/s/ Cecilia R. Seesholtz

CECILIA R. SEESHOLTZ
Appeal Reviewing Officer, District Ranger

cc: Stephen Best, Chip Ernst, Constance Smith, David Stewart, Berwyn Brown

Hard copy to be enclosed with Appeal Deciding Officer letter to appellants.