



File Code: 1570-1

Date: January 3, 2005

ERIK RYBERG
CENTER FOR BIOLOGICAL DIVERSITY
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RE: Appeal #05-03-07-0004-A215, Homestead/Davenport Allotments, Kaibab

Dear Mr. Ryberg;

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. 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 (ARO) 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 ARO recommended that the Forest MIS report 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 Project 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, Appeal Deciding Officer

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

Enclosures (2)

REVIEW AND FINDINGS

of

Center for Biological Diversity Erik Ryberg's**Appeal #05-03-07-0004-A215****Homestead/Davenport Allotments, Kaibab NF****ISSUE 1: The EA violates NEPA.**

Contention A: The EA lacks the specificity required by NEPA. The document does not include maps to identify where range improvements will be.

Response: The EA (PR #85) provides a detailed description of the proposed grazing strategy for the Davenport and Homestead Allotments. On page 8, the EA explains that the season of use on the Davenport Allotment would remain the same and the length of time that the new Depot Pasture would be used. A map (Figure 2) of the proposed improvements on the Davenport Allotment is on page 9 and there are no improvements proposed for the Homestead Allotment. The first monitoring measure on page 10 explains when cattle will be moved from pasture to pasture. On page 11 for the Davenport Allotment, the proposal is for deferred rotation; on page 12 for the Homestead Allotment, the proposal is for rest-rotation.

Finding: The EA provides a sufficient description of the proposed action and the alternatives.

Contention B: The discussion of invasive weeds is inconsistent and confusing and provides no basis for the assertion that weeds will not be spread by livestock. Mitigation of weed problems is unclear in the record and not found in Appendix 8 of the EA which does not exist.

Response: Current management within the project area includes inspecting the roadsides and adjacent areas for noxious weeds and the treatment of those weeds (EA PR#85 p.19). This management will continue with all action alternatives (EA p.20). Additional mitigation measures will be implemented as described in the second Appendix 7 titled Noxious and Invasive Weed Strategic Plan (EA pp.10, 89, and 90).

Activities within the project area include livestock grazing, logging and thinning, road maintenance and number of other activities (EA, p.20). Except for a small population of Dalmation toadflax, known weed populations are confined to roadsides (EA p.19). Management of roadsides and adjacent areas for noxious weeds and treatment of those weeds has reduced the spread of noxious weeds (EA, p. 20).

Finding: The effects of actions on noxious weeds are clear and the effects of livestock on noxious weeds are displayed.

Contention C: The document pretends grazing is good for burrowing owls and that shorter grass is better for nesting. Reproductive success of owls is decreased in grazed areas.

Response: The burrowing owl was analyzed as a Migratory Bird Species of Concern (Wildlife Specialist Report, PR#83, p. 6; c.f. Environmental Assessment, PR#85, p. 33). The effects of the

alternatives on burrowing owls involve habitat changes, not take of individuals or nests. The effects of the alternatives on burrowing owls are clearly disclosed. The District needs to 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.

Finding: The analysis of effects to the burrowing owl complies with Executive Order 13186.

Contention D: The document fails to evaluate an adequate range of alternatives. EA fails to disclose new information on whether a reduction in the White House pasture was needed, which is the single difference between the proposed action and the current grazing alternative in the Homestead allotment. An alternative must be formulated that addresses the fact that the Davenport allotment is in poor condition and getting worse and this alternative must also address the declining wildlife populations the EA reveals.

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 ID Team's first meeting developed four preliminary alternatives, three of which would reduce grazing (PR #1). At the second meeting, five alternatives were considered for the Davenport Allotment and two were dropped with supporting rationale (PR #2). An alternative for the Homestead Allotment is located and dismissed with rationale in PR #69. Scoping was conducted (PR #8); no key issues were identified (PR #18). Categorization of the public responses raised during scoping is located in PR #18 and PR #29.

Commenters suggested several alternatives and the ID Team addressed all of them. One suggested that no grazing occur in the Davenport Lake area (PR #11); the ID Team addressed this alternative, saying it had already considered it and explaining why it was not pursued further (PR #18). Another suggested two alternatives (the "25%" alternative and the "suite of grassland species" alternative) (PR #21). These were dismissed by the ID Team with rationale in PR #29. An additional alternative (one that would look at detailed needs of all those plant and wildlife species who are reliant on the grassland ecosystem) was suggested by a commenter after the end of the scoping period (PR #24). The ID Team addressed this alternative and again provided rationale for dismissing it in PR #29.

The Proposed Action for the Homestead Allotment stated that there would be a five day reduction in use of the White House pasture (PR #51, p. 4) to provide additional recovery time for cool season grasses. Subsequent analysis showed that this reduction was not warranted (PR #69) and it was dropped in the EA as explained on page 5.

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

Contention E: An EIS is required to address the impacts such as cumulative effects on wildlife and declining range condition.

Response: Direct and indirect effects are combined in the EA in the environmental consequences section. Past, present, and reasonably foreseeable future actions used for cumulative effects analysis are presented in the EA. A history of past grazing and tree encroachment is discussed and past, present and future actions such as prescribed burning, tree thinning, off-road vehicle use, and weed treatment are disclosed and analyzed (PR #85 pp.15, 18, 20, 21, 24-25 and 40-42). The selected alternative was designed to address declining range condition for the Davenport Allotment (PR #89). The EA (PR #85) analyzes direct, indirect, and cumulative effects to various resources in pages 13 to 45. Based on this analysis, a Finding of No Significant Impact was prepared.

Finding: The FONSI properly referenced the EA and document records. The conclusion that an Environmental Impact Statement is not necessary is consistent with the information in the record.

ISSUE 2: The FS failed to provide an EA for comment in violation of existing law.

Contention: The agencies must provide a full EA for public review prior to making the decision. The document provided was so incomplete as to prevent appellant from providing detailed comments on the action.

Response: In the *Citizens for Better Forestry v. USDA* case (August 2003), the court said that the 2000 Planning Rule EA/FONSI was issued 5 months after the comment period in the Federal Register had closed. In the *Anderson v. Evans* (Makah tribe whaling case, November 2003), NOAA had done an EA that went out for comment, then the proposed management plan was incorporated into the final EA and DN, but no public comment opportunity was given on the changed proposal. There is no language in either court decision saying that a full EA must be sent out for public comment.

In the Homestead/Davenport project, a 30-day notice and comment period was used and the proposed action sent out for public comment included a description of all the alternatives, mitigation measures, monitoring, and issues and concerns (PR #51). These sections included enough information for the public to respond with substantive comments specific to the proposed action, comments relating to the proposed action, and reasons for the Responsible Official to consider in making the decision (36 CFR§215.2).

Finding: The proposed action sent out under the 30-day notice and comment period met the new appeal regulations at 36 CFR 215.3. Enough information was given in the proposed action package to generate substantive comments from the public.

ISSUE 3: Grazing standards in the EA as proposed violate the Kaibab Forest Plan and NFMA.

Contention A: The FS has concluded because it has some site-specific information about the allotments, that it need not follow the Forest Plan guidelines for allowable use standards in the Range Condition and Management Strategy of the Forest Plan. The new standards are proposed without a citation to support it. A more strict monitoring scheme with a quantified regime of stocking reductions that responds to overuse is needed.

Response: The alternative selected follows the Kaibab Forest Plan 1996 guidelines for grazing in Threatened and Endangered Species habitat (Kaibab LRMP pp. 31, 32) by requiring an allowable use of 20 percent in the Mexican Spotted Owl restricted habitat on the southern portions of the Davenport Allotment and monitoring to assure this use is not exceeded (PR #31,

#39, #85 p.10, PR #84 p.2). The US Fish and Wildlife Service concurred with the proposed project (PR#41).

For the project area outside of Threatened and Endangered species habitat, a site specific range analysis was completed for both the Homestead and Davenport allotments from field work in 1998 and 1999. This was used in establishing the allowable use percentages identified in the proposal and selected alternative as described in the EA (p.17). The methodology for calculation is shown in PR#67 for one TES unit on the Davenport Allotment. The range analysis calculations for 1998-1999 for both allotments are available at the District (PR#44, pg 2, PR#18) and should be added to the project record as background data.

The Decision Notice (PR #84) and EA (PR #85 pp. 8, 10, 85) includes monitoring of forage utilization in key areas, moving of livestock from pastures that have reached allowable use, and off the allotment when utilization limits have been met in all the pastures available in the rotation. Key areas are locations readily accessible to water and forage and are located on level to intermediate slopes. (PR #85 p. 8)

Finding: The Responsible Official's decision followed the guidelines for allowable use standards in the Kaibab Forest Land Management Plan.

Contention B: Key forage monitoring areas are not identified, key species to monitor average allowable use are not selected, and forage use levels in consultation with USFWS were not developed.

Response: Proper forage utilization standards are employed to sustain such things as plant health and vigor, and long-term soil productivity. 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 EA (PR #85) and project record specifically address the limited MSO habitat in the project area. The Decision Notice (PR #84) employs a grazing utilization standard in the Kaibab LRMP (Plan Amendment 1996, p. 32, Table 14) as described in the Addendum to the Biological Assessment and Evaluation (PR #39) for the restricted MSO pine-oak forest habitat within the Davenport Allotment. The utilization standard identified for this habitat is 20 percent (PR #39, #85 p.10, PR #84 p.2). The MSO restricted habitat on the Davenport Allotment occurs mostly on the upper slopes of hills, currently receives little use by cattle, and is expected to receive even less use under the selected Alternative (PR #85 p.72, PR #39). The USFWS concurred with these findings (PR #41).

Finding: The Responsible Official did not violate NEPA by not disclosing the key area names and locations. There is nothing in federal statutes, regulations, or Forest Service policy that requires the Responsible Official to disclose the names and locations of each key area within an allotment in an EA. Utilization standards and monitoring protocol for the Homestead/Davenport

Grazing Allotment were developed in accordance with Forest Service policy and through USFWS consultation.

Contention C: MIS population monitoring does not go beyond what the state agencies have done. The agency is required to conduct population monitoring or have a habitat proxy scheme in place.

Response: Population trend data for MIS were summarized in the Wildlife Specialist Report (PR#83), which referenced the Kaibab Forest Level MIS Analysis. The Forest Level MIS Analysis includes information on population trend and habitat trend for MIS. This analysis does rely on AGFD, BBS data and NatureServe information to determine forest-level population trend; however, the analysis at the project level also relied on waterfowl, pronghorn, and other observations on the Williams Ranger District in 1987, 1993-1995, and 2002-2004 (PR#78). This data includes observations on pronghorn, turkey, elk, and cinnamon teal. The District needs to include the Forest-level MIS analysis in the project record.

This data in conjunction with the AGFD, BBS trend data and NatureServe abundance rankings demonstrate that MIS have been and continue to be present on the Williams Ranger District as well as on the Kaibab National Forest. The analysis of the project impacts found in PR#83 relates the impacts of each alternative to forest-level habitat and population trend. Therefore, the conclusion of the analysis that the effects of all the alternatives would be local and would only slightly affect observed forest-wide habitat and population trends (PR#83, p. 8 and 13) was warranted.

Finding: The effects of the proposal on forest-level population trend are clearly disclosed for those species in the project area, with the conclusion that the project effects are local, small, and will not affect the observed forest-wide population trends under any alternative.



United States
Department of
Agriculture

Forest
Service

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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.