



File Code: 1570-1

Date: January 3, 2005

MATTHEW BISHOP
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RE: Appeal #05-03-07-0003-A215, Homestead/Davenport Allotments Grazing Authorization

Dear Mr. Bishop:

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 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 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, Stephen Best, David M Stewart, Berwyn Brown, Cecilia R Seesholtz, Mailroom R3 Kaibab

Enclosures (2)

REVIEW AND FINDINGS

of

Western Env'l Law Center Matthew Bishop's**Appeal #05-03-07-0003-A215****Homestead/Davenport Allotments Kaibab NF****ISSUE 1: The project does not meet the requirements of NEPA.**

Contention A: The EA failed to properly assess the direct impacts of its decision to authorize grazing on the region's wetlands, in particular the trampling and removal of wetland vegetation, erosion, and soil compaction in three ephemeral wetlands (Davenport Lake, Dry Lake and Depot or Duck Lake). The EA ignores relevant literature on impacts. The conclusion in the EA that elk play a role in deterioration of wetlands is not backed up by evidence. The FS fails to assess the impacts from livestock grazing on the waterfowl such as the impact on nesting habitat for cinnamon teal.

Response: The selected Alternative 2 provides management designed to minimize effects of livestock grazing on the ephemeral wetlands of the Davenport Allotment. The decision eliminates grazing of the Davenport Lake area when this ephemeral lake is wet (PR #84 p. 2, PR #85 pp. 10-11), and assures that utilization would not exceed 30 percent in the Dry Lake ephemeral wetland (PR #84 p. 2, PR #85 p. 10). The EA (p. 24) discloses the effects of these management actions. The Homestead/Davenport Allotment EA (p. 17-18 and p. 24-26) and PR#s 19, 72, 77 and 80 describe the condition of the ephemeral wetlands, particularly the plant composition, litter on the soil surface, soil texture, and comparison of grazed and ungrazed areas. To more precisely differentiate between the impacts of livestock versus elk, the decision provides for construction of two exclosures (one for cattle only and one for all ungulates) in the Davenport Lake area (PR# 84, p.2).

Impacts of livestock grazing to cinnamon teal are disclosed in the Environmental Assessment (PR#85, pp. 38-40, 43) and in the Wildlife Specialist Report (PR#83, pp. 8, 13-18). These documents disclose the impacts of livestock grazing on the vegetation characteristics which affect cinnamon teal nesting.

Finding: The environmental impacts of grazing on wetlands were assessed and disclosed.

Contention B: The digging and maintenance of stock ponds in the middle of the two wetlands has a significant effect on the wetlands. The EA ignores the significant and adverse impacts and refers to a watershed specialist report on the issue but does not provide any of the information for public review in the EA. The stock pond maintenance activity work is not analyzed in the EA as it should be.

Response: The decision does not propose construction or clean-out of any 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 effects on ecologic and hydrologic function of the wetlands to evaluate cumulative effects (PR# 80). The record provides evidence that the existence of 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). The cleaning and maintenance of existing stock tanks, if needed, will be a provision included in the annual operating instructions (PR# 62, p. 1).

Finding: Analysis and disclosure of the impacts of stock tanks was appropriately conducted.

Contention C: The EA fails to assess impacts that livestock grazing is having on the area's abundance and diversity of native grasses. Recent range analyses on Pickett Lake and Anderson Springs shows the impacts are severe. Drought policy and adjustments for health of the land is not analyzed in the EA.

Response: The EA discloses the effects of the alternatives analyzed in detail on species diversity, herbaceous cover and production, and cool season plant diversity. Range condition and trend are also disclosed. The direct, indirect and cumulative effects are disclosed in the EA (PR#85).

With the management changes proposed on the Davenport Allotment increased densities of cool season grasses and effective ground cover are projected. Increased herbaceous cover and litter are expected to enhance soil moisture retention, enhance nutrient cycling, and reduce soil compaction on alluvial bottomlands.

Upward trend of forage cover, vigor, and species diversity is projected to continue on the Homestead Allotment.

On-going drought related monitoring will continue and stocking levels will be adjusted accordingly on an annual basis. Based on past drought monitoring stocking on the Davenport Allotment was reduced 45 percent in 2003, and 12 percent in 2004. Comparable adjustments were made on the Homestead Allotment (PR# 85).

Finding: Recent range analyses on Pickett Lake and Anderson Springs have no direct relationship to the Homestead/Davenport analysis. The EA adequately addresses impacts of livestock grazing on the area's abundance and diversity of native grasses.

Contention D: The EA fails to address indirect and cumulative impacts. Effects of allowing livestock grazing on the region's wildlife habitat, the high altitude wetlands in the region, waterfowl habitat, migration corridors and MIS species are not addressed. Indirect effects of stock tanks, and other authorized activities such as barbed wire fences on pronghorn, road maintenance and vehicular access impacts on wildlife; and grazing effects to plant growth and waterfowl habitat are ignored. The timeframe for assessing future actions should be 10 years. The cumulative effects of other activities such as water development, hunting, and recreational use should be addressed.

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). Cumulative watershed effects cover the period 2 years prior to this action and 10 years into the future for the permit life.

Finding: The record includes consideration of past, present, and reasonably foreseeable actions and their cumulative effects on the components of the human environment. The indirect and cumulative effects analysis is adequate for an informed decision.

Contention E: The EA fails to analyze a range of reasonable alternatives. Alternatives that would (1) remove cows from wetlands and do restoration, or (2) prohibit cows on areas with wetlands, or (3) allow cattle access only through water lanes and prohibiting access to wetlands, or (4) allow grazing only during wet years; should have been considered in the range of alternatives. The EA fails to include any alternative that would remove or fill in the stock tanks.

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)).

Three alternatives were considered, the no grazing alternative, the current permit alternative and the proposed action alternative. Another alternative to eliminate grazing from the Davenport Lake wetland area was considered but eliminated from detailed study due to the lack of beneficial effects and the expected detriment from fencing that would be needed to implement it (PR #85 p.9). There was extensive public comment made during the development of the alternatives from environmental groups, State agencies and individuals. The interdisciplinary team and Responsible Official considered multiple comments and no significant issues arose that developed new alternatives (EA PR#85 p.5, Appendix 1 of EA, PR#1, 2, 5, 6, 18, 29, 44, 45, 46, 47, 62, and 70).

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

Contention F: The EA fails to provide enough information to provide the opportunity to submit meaningful public comment.

Response: The proposed action was sent out twice, once in February 2001 (PR#8, 9, and 10) and again later with a revised proposed action in June 2004 (PR#51). The revised proposed action was sent out after the new appeal regulations were published (June 4, 2003), and had a 30-day notice and comment period. This package included all alternatives with information about numbers, consideration of one alternative that was deleted, maps, and a monitoring plan (PR#51). Also, mitigation measures to answer public concerns were discussed. 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.

Contention G: The EA failed to assess or meaningfully evaluate the relevant scientific literature, including studies submitted by Arizona Wildlife Federation, as required under CEQ regulations (40 CFR 1500.1(b)).

Response: The appellant misquotes the CEQ regulation, which states that environmental information must be made available to public officials and citizens before decisions are made under NEPA. The information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA. Most important, NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail.

The record shows that the agency and the public had several discussions about findings relative to grazing, antelope, waterfowl, and wetlands for the two allotments being evaluated. The District and Forest experts reviewed public input, did more data collection, and changed some aspects of the proposed action as a result (see PR#69 and PR#85 p. 5 on White House pasture cool season grass use, see PR#19 and PR#85 p.9 on plant species found in grazed versus ungrazed areas near Davenport Lake).

The project record shows several discussions with Arizona Wildlife Federation and Mr. Erman about conditions on the two allotments, Anderson Mesa, and northern Arizona in general. A specific review of literature cited by Mr. Erman (PR#58) in July 2004 was conducted and is in the record (PR#79). Other correspondence with AWF includes PR#21 and 24 which both reference another project on Coconino NF; PR#25 which includes a map of wetlands identified by AWF and reviewed by FS PR#30; a discussion by the interdisciplinary team as to the data and studies in the area (PR#29), PR#33, #34, and #38 with responses by the interdisciplinary team in PR#44, and by letter in PR#45 and #47. Another set of comments was made in PR#58 which were reviewed and considered in PR#70 and with final responses in the Appendix 1 of the EA (PR#85).

Finding: Information and citations supplied by Arizona Wildlife Federation were reviewed and considered in the analysis process. The interdisciplinary team and Responsible Official appropriately determined which information was important and relevant to the scope of the proposed action. The CEQ regulations were not violated.

ISSUE 2: The decision violates the NFMA requirement to manage for viable populations of pronghorn antelope and cinnamon teal.

Contention A: The FS has specifically failed to monitor population trends for cinnamon teal by either monitoring the population directly or indirectly via the proxy on proxy approach, and also failed to manage wildlife habitat to maintain viable populations of cinnamon teal. Instead the EA relies on BBS and NatureServe population data which are contradictory and not accurate, which is arbitrary and capricious. There is also no habitat trend data for cinnamon teal on the Forest.

Response: Population trend data for cinnamon teal was 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. This analysis does rely on BBS data and NatureServe information to determine Forest Level population trend; however, the analysis at the project level also relied on waterfowl observations on the Williams Ranger

District in 1987, 1993-1995, and 2002-2004 (PR#78). These data show that cinnamon teal were present, sometimes in large numbers, at various locations on the Williams Ranger District in all years surveyed. In addition, evidence of nesting occurred in 1995 (ducklings were observed). The project record (PR#78) also documents that 99 percent of cinnamon teal use of Davenport Lake occurs from February to May, and livestock are allowed in this area from May 16 through October 31 annually (EA, PR#85). This information was communicated to several persons who commented on the EA (PR#45, 47). The Forest needs to include the Forest-level MIS Analysis in the project record, as well as any and all waterfowl observation data not already included in PR#78.

This data, in conjunction with the Arizona BBS trend data and NatureServe abundance rankings, demonstrate that cinnamon teal have been and continue to be present on the Williams Ranger District as well as on the Kaibab National Forest. Furthermore, observations of cinnamon teal in Davenport Lake demonstrate that cinnamon teal have utilized the project area with on-going livestock use.

As to habitat trends, the Forest Level MIS Analysis (cited in PR#83) states that natural wetlands have not declined since the signing of the Kaibab Forest Plan, and the number of stock ponds has increased. These stock ponds are utilized by waterfowl (PR#78). An examination of grazed and ungrazed plant composition at Davenport Lake (PR#19) was conducted, and the plant composition in both portions was the same in both grazed and ungrazed areas.

The analysis of the project impacts found in PR#83 relates the impacts of each alternative to Forest Level habitat and population trend, recognizing that stock ponds do not contain high-quality cinnamon teal habitat, that Davenport Lake is not suitable cinnamon teal habitat except in very wet years (once in the last 5 years, or 20 percent of the time; PR#74), and that drought conditions continue to reduce the amount of quality cinnamon teal habitat on the Forest. 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. 13) was warranted.

Finding: The population and habitat trend data utilized was sufficient to make a determination that the project would not significantly affect the forest-wide habitat and population trends of cinnamon teal.

Contention B: The FS relies on outdated and incomplete population data on pronghorn and mule deer and does not have the habitat data to make habitat trend analysis for these species.

Response: The project was determined to have no effect on mule deer habitat or population trends (Wildlife Specialist Report, PR#83, Appendix 6).

Population data for pronghorn were incorporated by referencing the Forest Level MIS Analysis in PR#83. The Forest Level MIS Report utilizes aerial pronghorn counts (number seen per hour flown) for 5 Game Management Units (GMUs). This data is available from 1985-1990, and from 1992-2001. In addition, the Forest Level MIS Report examined data on fawn/doe ratios for pronghorn (an important measure of population health) from the Arizona Game and Fish Department. These data are from 1988 through 2000. Although the population trends and fawn/doe ratios in these different populations vary, there is no evidence that the data are inaccurate or incomplete, nor is there evidence for concern for the pronghorn population at the forest-level. The Forest Level report concludes that "...all herds that seasonally occupy [Kaibab

National Forest] lands are estimated to be well above the minimum viable population level and may have increasing population trends.”

The Wildlife Specialist Report (PR#83, pp. 3-5) summarizes the local population trends and project level habitat quality and quantity. The project record (PR#78) also contains numerous sightings of pronghorn on the Williams Ranger District and specifically in the Davenport Lake area and surrounding area. From October, 2003 through September, 2004, individual or groups of pronghorn were observed 81 times; group sizes were as large as 33 animals. This data suggests that pronghorn are common and abundant in the project area and supports the conclusions within the Forest Level MIS analysis.

Habitat at the forest-level is also addressed in the Forest Level MIS Analysis (not in record, pp. 107-109). This document reviews the characteristics of quality pronghorn habitat and concludes that the Williams Ranger District meets the ground cover, vegetation diversity, and forb level components of quality pronghorn habitat, although the grass component is slightly low on the District. The forest-wide habitat trend is considered stable. The Forest needs to include the Forest Level MIS Analysis in the project record, as well as any and all pronghorn observation data not already included in PR#78.

The analysis of the project effects (PR#83) considered both the total amount of pronghorn habitat in the project area as well as the amount of quality pronghorn habitat in the project area (PR#83, p. 3), and concluded that effects to pronghorn habitat quality would be slight and in general pronghorn habitat would be maintained (PR#83, p. 18). Thus, there would be minimal effects to the forest-wide population and habitat trends for pronghorn.

Finding: The population and habitat trend data utilized was sufficient to make a determination that the project would not significantly affect the forest-wide habitat and population trends of pronghorn.

ISSUE 3: The Decision violates the NFMA and Kaibab Forest Plan

Contention A: The Forest Service violated NFMA by continuing to allow cattle grazing on the allotment without first evaluating the allotment's suitability for grazing. There is no analysis of the suitability of allowing grazing in the wetlands which is MIS habitat and needs to be managed for wildlife. The allotments are in less than satisfactory condition which should be remedied.

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 Land and Resource Management Plan (LRMP), 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 (Kaibab Plan EIS Appendix B- Description of Analysis Process).

The Affected Environment section in the EIS for the Kaibab LRMP, (pp. 128 – 130) describes acres considered suitable for rangeland. Suitable acres are again discussed in Chapter 4 Environmental Consequences (pp. 195 – 197), where both suitable and unsuitable lands are described. See response to wetland issue that follows.

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

ISSUE 4: The EA fails to comply with Executive Order 11990 to protect wetlands.

Contention: By allowing stock ponds to be dug out and maintained in the wetlands and allowing livestock to water and graze, the FS violates the mandates of EO 11990. These actions are the antithesis of enhancement of the beneficial values of wetlands.

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). The three existing stock tanks are 75-100 years old and were constructed long before the passage of E.O. 11990 (PR# 85, p. 22).

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



United States
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Agriculture

Forest
Service

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File Code: 1570-1
Route To:

Date: December 17, 2004

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.