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Forest
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Date: May 5, 2005

David C. Kennedy
818 E. Osborn Road
Phoenix, AZ 85014

RE: Appeal #05-03-07-0007-A251, Anita/Cameron Allotments, Tusayan Ranger District,
Kaibab National Forest

Dear Mr. Kennedy:

This letter documents my second-level review decision of the appeal you filed on behalf of Auza and Son Farms regarding District Ranger Stahn's (Deciding Officer) decision to implement Alternative 1 for management of livestock use on the Anita/Cameron Allotments. The Deciding Officer's decision is documented in a Decision Notice and Finding of No Significant Impact dated October 8, 2004. Your appeal has been processed under the provisions of 36 CFR 251, subpart C.

BACKGROUND

The Deciding Officer made a decision to implement Alternative 1 for management of livestock use on the Anita/Cameron Allotments on October 8, 2004.

Your first-level appeal was filed on December 27, 2004. In a letter dated December 28, 2004, Forest Supervisor Williams (Reviewing Officer) indicated that your appeal was timely and would be processed in accordance with 36 CFR 251. Based on the appellant's request of February 1, 2005, an oral presentation was held on February 3, 2005 (36 CFR 251.97). The Reviewing Officer closed the record following the oral presentation on February 3, 2005. Based on his review of the record, the Reviewing Officer affirmed the Deciding Officer's decision on March 4, 2005.

The second level appeal was received in this office on March 22, 2005. On March 30, 2005, I notified you your appeal had been filed in a timely manner. In that letter I also denied your request for an oral presentation because the Secretary of Agriculture Regulations, 36 CFR 251.99(d) do not provide for an oral hearing at the second level of appeal.

POINTS OF APPEAL

The review of your appeal was confined to the substantive points raised in the appeal related to the analysis process, the appeal record, federal regulations, and the policies and operational procedures as set out in the directives system of the USDA Forest Service.

ISSUE 1: The Permittee was not engaged in and did not participate in the NEPA process.

Contention: The appellant contends that the permittee was not consulted during the preparation



of the EA, the alternatives were developed without the permittee's knowledge, and the permittee was discriminated against because he was not included in any of the decision-making. The appellant cites FSH 2209.13, Section 92.23 that encourages active participation between grazing permittees and the Forest Service to resolve management problems and determine how to reach desired land conditions when livestock grazing is authorized.

Response: The appellant acquired the term grazing permit for the Anita/Cameron Allotments early in 2004 prior to the time the Deciding Officer sent the proposed action out for public comment. The proposed action was mailed to the appellant on May 18, 2004, with a request to send written comments to the Kaibab National Forest by June 18, 2004 (PR# 42). The record reflects the appellant did not submit written comments or initiate further action to enter into any type of dialogue with the Deciding Officer. The only dialogue that occurred after the proposed action was mailed to the appellant was a phone call from Dave Brewer (Interdisciplinary Team Leader) to the appellant stressing the importance of replying in writing regarding any concerns the appellant may have. During that conversation the appellant indicated he felt the upper limit (1,310 mature units) would not be enough livestock for a profitable operation (PR# 45). The appellant also indicated during the phone call he would contact Mr. Brewer to set up a time and date to discuss how the proposed action was arrived at and any other issues.

There are no other documents in the record to indicate that the Forest Service and the appellant entered into any further dialogue regarding the development of alternatives that were subsequently analyzed in the environmental assessment.

Finding: The purpose of guidance in FSM 2209.13 regarding the involvement of grazing permittees is to receive meaningful input from permittees in developing the proposed action and the subsequent analysis of the effects of all alternatives considered in detail. The record indicates the appellant was provided the opportunity to provide comments on the proposed action and to meet with Agency personnel to have further discussions related to that action. However, the record does not reflect any response from the appellant and subsequent further dialogue regarding development of the proposed action.

ISSUE 2: The conclusions reached in the Environmental Assessment ignore or misinterpret facts and therefore violate 36 CFR 222, Subpart A.

Contention: The appellant contends that the reduction in permitted livestock grazing is not supported by the analysis.

Response: Significant resource issues on the Anita/Cameron Allotments include improvement of vegetation and watershed resources and enhancement of wildlife habitat (PR# 75). Specifically, the purpose of the analysis was to 1) improve range, watershed, and wildlife resource conditions in the project area, 2) provide forage to qualified livestock operators consistent with the Forest Plan, 3) contribute to the economic diversity and social well being of communities dependent on range resources for their livelihood, 4) meet the goals and objectives of the Kaibab Forest Land and Resource Management Plan, and 5) provide full public disclosure of the environmental impacts of the proposed action. The need for action was triggered because range resource and browse conditions in the winter rangelands are not meeting desired conditions.

The assessment of existing rangeland resources on the allotments is based on a series of range analyses, allotment inspections, and recent transect data (PR# 1-15, 18, 19, 32, 38). The data for capacity and capability are summarized in Exhibits 5, 6, and 7 (PR# 72). TES surveys and observations of forage production formed the basis for these exhibits.

The selected alternative is projected to improve the economics of ranching by combining both allotments into a single management unit. Changing the season of livestock use from yearlong to summer and reducing permitted numbers to a range that reflects fluctuating forage production in the Southwest is projected to improve range resources, reduce soil erosion, and improve browse conditions for mule deer, antelope and elk (PR# 74, 75).

The appellant argues that the reduction in permitted livestock grazing is not anticipated to have any effect on range, soil, and wildlife habitat among alternatives as displayed in the various tables in the environmental consequences section of the analysis. However, none of the alternatives analyzed in detail contemplated stocking the allotments at the full numbers currently authorized on the permit on a yearlong basis. Alternative 2 is the no action alternative that means no grazing. Although Alternative 3 (current management) contemplates yearlong grazing, the numbers of livestock to be authorized under a new permit range between 10 to 40 percent of the current term permit numbers. This is based on historical data related to annual fluctuations in actual livestock use and season of use between 1986 and 2004 (PR# 75). Alternative 4 would not authorize a term permit, but would authorize the issuance of temporary permits when forage and water sources were adequate. The EA and Decision Notice describe alternatives considered and those dropped from detailed study (PR #74, 75).

An alternative that would authorize current term permit numbers on a yearlong basis was considered but eliminated from detailed study because it exceeded the capacity of the allotments by at least 50 percent and would lead to unacceptable resource impacts. Additionally, this alternative did not meet the purpose and need identified in the environmental analysis.

An alternative that would change the season of use to summer, implement a rest-rotation grazing strategy, and change the class of livestock to sheep was dropped from detailed study because it would pose a disease threat to desert bighorn sheep in the Grand Canyon National Park.

Finding: The Deciding Officer appropriately defined the scope of the analysis and analyzed a reasonable range of alternatives within that scope. The Deciding Officer considered the best available information in the analysis. The environmental impacts of the alternatives analyzed in detail were appropriately disclosed in the environmental analysis. The reduction of permitted numbers clearly reflects historical actual use within the capability of the allotments to support livestock grazing. There have been no violations of 36 CFR 222, Subpart A.

ISSUE 3: There is a significant impact when permitted use is reduced by up to 75 percent.

Contention: The appellant contends the economic analysis is not meaningful because it fails to consider stocking rates, season of use, and class of livestock.

Response: The economic effects of the project were identified as a significant issue (PR# 56). The economic analysis (PR# 72, 75) assisted the Deciding Officer in making his decision. It is not an exhaustive economic determination but rather an estimate of economic efficiency. The economics report is not designed to be the only tool used by the decision maker, only one of the

many items to be considered. The economic analysis looked at costs to operate the allotments under various alternatives. Project level requirements for social and economic analysis are described in Forest Service Manual 1970 and Forest Service Social and Economic Analysis Handbook 1909.17. The responsible line officer determines the scope, appropriate level and complexity of economic and social analysis needed (FSM 1970.6).

Finding: The economic analysis is consistent with regulation and Forest Service policy for project level decision-making. The analysis provided sufficient information for the Deciding Officer to make a reasoned decision on alternative selection.

ISSUE 4: Reallocation of resources from permitted livestock to wildlife.

Contention: The appellant contends it is unlawful to reallocate resources from permitted livestock to wildlife.

Response: Section 1 of the Multiple Use Sustained Yield Act states “It is the policy of the Congress that the National Forests are established and shall be administered for outdoor recreation, range, timber, watershed, and wildlife and fish Purposes....” Section 2 of the Act authorizes and directs the Secretary of Agriculture to develop and administer the renewable surface resources of the National Forests for multiple use and sustained yield of the several products and services obtained there from. Section 4 of the Act defines “Multiple Use” as the “management of all the various renewable surface resources of the National Forests so that they are utilized in the combination that will best meet the needs of the American people; making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; that some land will be used for less than all of the resources; and harmonious and coordinated management of the various resources, each with the other, 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.”

Goal statements in the Kaibab Land and Resource Management Plan related to range and wildlife include “Cooperate with the Arizona Game and Fish Department to achieve management goals and objectives specified in the Arizona Wildlife and Fisheries Comprehensive Plan... Produce the maximum amount of forage, consistent with other resource values, for use by wildlife and livestock on a sustained yield basis. Benefits are improved watershed condition, range forage, wildlife habitat, and enhanced visual quality.”

Forest Plan Ecosystem Management Areas, 8, 9, and 10 are located within the project area (PR# 75). Ecosystem Management Area 10 contains the principal elk calving, deer, and pronghorn antelope fawning, and turkey, nesting habitat on the Tusayan District. Ecosystem Management Area 8 is important winter habitat for mule deer. Winter turkey roost tree-groups are also a very important feature found in this unit. Ecosystem Management Area 9 is winter habitat for mule deer and provides the only extensive black bear habitat on the Tusayan District. Management direction for Ecosystem Management Areas 8 and 9 include provisions for intensive management of wildlife habitats and formulating plans in concert with the Arizona Game and Fish Department to ensure a high level of habitat diversity and capability. Management direction for rangeland resources includes balancing long-term grazing use and capacity through removal or addition of permitted livestock use.

The record discloses that the on December 19, 2001, the former term grazing permit holder for the Anita/Cameron Allotments, Mr. Gregg Gibbons, was notified by Derek Padilla that the capacity evaluation for the allotments had been completed. Mr. Gibbons was informed the estimated stocking rate was for 500 to 700 head of adult cattle yearlong (PR# 21). This stocking rate is consistent with the proposed action for a 6-month season. In another conversation Mr. Gibbons informed Mr. Padilla that he wanted to combine the two allotments and market them as one using the aforementioned stocking rate as estimates of the permitted numbers prospective purchasers could expect to run following completion of a NEPA decision for the allotments.

On December 16, 2003, the appellant met with Forest Service personnel prior to obtaining a term grazing permit for the Anita/Cameron Allotments. At this meeting the appellant was informed that until the NEPA analysis was completed for the allotments the season of use would be 6 months during the summer and maximum authorized numbers would be 850 head of adult cattle. The appellant was also informed the preliminary data and information being used to develop the proposed action indicated the season of use would be 6 months and permitted use on the term grazing permit would be reduced 50 to 60 percent.

Finding: There has been no violation of law. The decision is consistent with Forest Plan direction. The appellant was informed prior to acquiring the term grazing permit that permitted numbers and season of use authorized under the permit would change substantially.

APPEAL DECISION

After a detailed review of the record and the First Level Appeal Reviewing Officer's decision, I find that the Deciding Officer's decision to implement Alternative 1 was based on a reasonable assessment of the resource conditions on the Anita and Cameron Allotments.

My decision constitutes the final administrative determination of the Department of Agriculture [36 CFR 251.87(e)(3)].

Sincerely,

/s/ Lucia M. Turner
LUCIA M. TURNER
Appeal Reviewing Officer, Deputy Regional
Forester

cc: David M Stewart, Constance J Smith, Mailroom R3 Kaibab, Richard Stahn, John F Peterson