



File Code: 1570-1/2200

Date: February 11, 2005

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RE: Appeal #05-03-07-0006-A215, Anita, Cameron, and Moqui Allotments

Dear Ms. Anderson:

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 combining of Anita and Cameron allotments into one grazing unit, a reduction in animal unit months authorized, and the reconstruction of 21.5 miles of boundary fences. On Moqui Allotment, the decision calls for a range of livestock numbers from 280 to 560 yearlings.

BACKGROUND

District Ranger Rick Stahn made the decision on October 8, 2004, and published on November 13, 2004, for the Kaibab National Forest on the Anita, Cameron and Moqui allotments. 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.



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 Anita, Cameron, and Moqui Allotments Project with the following instruction to add to the record the following reference:

- Preliminary Survey for *Chrysothamnus molestus* on Tusayan and Chalender Ranger Districts, December 1988, by Renee Galeano-Popp.

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

Sincerely,

/s/ Stuart M. Lovejoy (for)
MICHAEL R. WILLIAMS
Forest Supervisor

Enclosures 2

cc: Keith L Graves, David M Stewart, Berwyn Brown, Constance J Smith, Richard Stahn,
Mailroom R3 Kaibab

REVIEW AND FINDINGS

of

Center for Biological Diversity Greta Anderson's

Appeal #05-03-07-0006-A215

Anita, Cameron and Moqui Allotments, Kaibab NF

ISSUE 1: The EA violates NEPA.

Contention A: The range of alternatives is too narrow, a violation of NEPA and FSH 1909.15 section 23.2. The inadequate consideration of Alternative 2 is a violation of the FS handbook. It is impossible to see the difference in authorized numbers being proposed in Alternative 1 and 3. The two alternatives (Alternatives 5 and 6) are not a reasonable range of alternatives since they exceed capacity and pose threats to desert bighorn sheep.

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)).

Anita and Cameron Allotments: The project initiation letter defined the scope of the analysis and focused the interdisciplinary team (IDT) on three alternatives to assess; no grazing, proposed action and current grazing (PR# 28). Members of the ID Team met with the Arizona Game and Fish on May 21, 2004 (PR# 44) and discussed an additional alternative that would consider the use of the allotments under a temporary permitting system when conditions are optimum. After further discussions with the District Ranger the ID Team Leader developed an issue statement and alternative (PR# 55) that looked at a temporary permitting system. This alternative was reviewed and approved by the District Ranger on July 2, 2004 (PR# 57). This action, Alternative 4, was fully disclosed in the EA (PR# 75 pages 15 and 16).

Two other alternatives were considered, but dropped from detailed study. This included Alternative 5, which would authorize current permitted number for a yearlong season of use, and Alternative-6, converting to summer use with sheep (PR# 75). Both of these alternatives were considered but not studied in detail for valid reasons. Alternative-5 exceeded the estimated livestock capacity by at least 50 percent (PR #12, #13, #72 Exhibit-5, and #75 pages 63 to 65) and would not meet the stated purpose and need for improved forage conditions. The conversion from cattle to sheep (Alternative 6 in EA) was dropped due to concerns regarding disease transmission from domestic sheep to Desert Big Horn Sheep at the Grand Canyon National Park (PR# 48, #49, PR #75 p. 16).

Moqui Allotment: Following the presentation of the proposed action to the public and the responses from the public notification, one other alternative was considered for the Moqui allotment. The single alternative considered after public notification was discussed and dismissed (PR #56)

Documentation of discussions over several weeks (PR#57) indicates the District Ranger discussed the range of alternatives with the ID team leader and approved the alternatives for the 3 allotments (PR #56).

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

Contention B: The economic effects considered in the EA focus on the economic benefit to the rancher, which violates NEPA as well as the MUSY. The agency has worked to provide alternatives that protect the economic interests of the ranchers instead of selecting an alternative that would better protect the environment. The economic benefit of eliminating livestock grazing and the likely increase in non-extractive uses was not considered in the EA. Appellant lists various costs from implementation that she feels should have been included in the economic analysis.

Response: Projects such as the Anita, Cameron and Moqui grazing allotments are developed to be consistent with the direction described in the Forest Plan. The proposed action is the implementation of previously approved practices that are included in the current Kaibab LRMP. The economic effects of a trade-off with other multiple uses must be made at the Forest Plan level.

The economic effects of the project were identified by numerous responses during, project initiation (PR# 28), scoping (PR# 41, 42, 43, 45) and identified as a significant issue for the analysis (PR# 56).

The economic analysis (EA PR# 75, Exhibit 19 in PR# 72) is to assist the decision maker, District Ranger, or Forest Supervisor, in making the 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 effects analysis looked at costs to operate the allotments under various alternatives and amenity costs were not analyzed. Project level requirements for social and economic analysis are described in Forest Service Manual (FSM 1970) and Forest Service Social and Economic Analysis Handbook (FSH 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 portion of the EA (PR# 75) was adequate to provide information for the Responsible Official to make a reasoned decision on alternative selection. The economic analysis was used to assist the decision maker in making the decision.

Contention C: The EA failed to address timely and relevant comments submitted by appellants in violation of NEPA, FOIA and APA. Appellant lists water diversions, map of roads, range condition, and map of water developments as requests that were made.

Response: Center for Biological Diversity comments were included and considered in the record (PR #52, #56, #66). Project Record #38 is a series of maps depicting water developments, fences, pipelines, roads and range conditions with full capacity, partial capacity, or no capacity, for the Anita, Cameron, and Moqui allotments and includes the information sought by appellant. The EA and DN summarize the public involvement (DN PR #74 p.5 and EA PR #75 pp.11-13). The appellant has filed an appeal under FOIA and a response is being processed (reference FOIA Appeal WO- 05-2766, Kaibab letter of January 11, 2005, File Code 6270-1-2, not in record).

Finding: Public comments were considered in the analysis and described and summarized in the NEPA document. Copies of the record information are being pursued by the appellant separately through the FOIA.

ISSUE 2: The project violates NFMA and the Kaibab Forest Plan.

Contention A: The DN fails to address the habitat needs of northern goshawk, a Management Indicator Species in violation of NFMA. There is no discussion of causes of decreased fledging production. The EA should contain all monitoring data for sensitive species while this EA only really compares population numbers for deer, elk and turkey. The FS must correlate trend of goshawk populations on the allotments with the years of non-use or low actual use.

Response: The contention addresses northern goshawk as both the MIS designation and the sensitive species designation. The discussions of MIS and sensitive species are not restricted to one location within the document, but are scattered throughout the EA, appendix and project record. The EA page 40 identifies the northern goshawk as a sensitive species, identifies the habitat, habitat characteristics, the most important prey species (eastern cottontail) for northern goshawk in the project area that may be affected by grazing, along with a brief condition and trend statement on prey species habitat. Eastern cottontail habitat condition and trend is again discussed on page 45.

On page 41 the northern goshawk is identified as being a MIS representing “late-seral ponderosa pine”. Since the selected habitat feature is late-seral ponderosa pine, there would be no effects from grazing on that habitat element. Monitoring and inventory data is however summarized. Pages 48-49 state that population trends would not likely be affected due to the fact that grasslands and grassland prey species constitute a minor portion of the habitat and prey base.

The contention that the FS must correlate trend of goshawk populations on the allotments with the years of non-use is not a requirement of NFMA. However, it is obvious from the EA pages 58 and 60 and the MIS for the KNF (PR# 26A) that the lowest occupancy on the Tusayan RD includes the periods of non-use or lowest actual use by livestock.

Finding: The EA along with the information in the project record adequately addresses goshawk and its habitat. Adequate monitoring and inventory data has been collected on the allotments. There is no NFMA requirement to correlate population trends with grazing use, although there appears to be no correlation between grazing and fledgling production.

Contention B: The EA failed to address the population status of disturbed rabbitbrush (*Chrysothamnus molestus*) on this allotment although this is a category 2 sensitive species known to occur. This is a violation of the Forest Plan and FSM regulations.

Response: One of the primary objectives of the proposed action was to improve range resource conditions (PR #75 p.9) because range resource and browse conditions in the winter rangelands

are not meeting desired conditions. Browse species including the associated winterfat and fourwing saltbush are described as most affected by cattle grazing during winter months, when grasses are covered by snow. Alternatives 1, 2 and 4 would eliminate or restrict greatly the ability to graze in the winter months and in combination with the lowered stocking levels would increase browse production (shrub growth) (PR #75 p. 49). The effects to browse species could increase fourwing saltbush and winterfat occurrence from below 5 percent in frequency to 20 or 25 percent under improved management (PR #75 p. 70) on a total of 21,456 acres of improved browse habitat. Changes foreseen for Alternative 1 include improved browse conditions for Anita and Cameron allotments. For the Moqui Allotment, warm season plants like winterfat, will benefit the most under the deferred rotation grazing system. Acres of improved range condition would increase from 11,920 to 19, 745 acres (p.72).

This sensitive species was raised as an issue in a letter submitted during scoping (PR#52) and again raised in a letter received during the public comment period from the appellants (PR#66). The comment was included in the Analysis of Comments for the project (PR#56).

Chrysothamnus molestus is a Regional Forester Sensitive Species (1999). The Environmental Assessment (PR#75 p. 36 Table 9) incorrectly identifies this species as a “species of local concern.” There was no discussion of the species in the Biological Evaluation (PR# 73) and no effects determination was made for the species as required by FSM 2670 direction. The EA states that *C. molestus* is found within the fourwing saltbush ecosystem (PR #75 p. 37) and is considered excellent browse for native wildlife and domestic livestock (p. 38). This is supported by another earlier document (1988) not in the record and summarized later.

The project area covers Forest Ecosystem Management Areas 8, 9, and 10 (PR #75 p. 2). The relevant Forest Plan direction in EMA (Ecosystem Management Areas) 8 and 9 is to develop resource habitat management plans for sensitive species (LRMP pp.56, 60). Ecosystem Management Area 10 describes the occurrence of *Chrysothamnus molestus* as a sensitive species in the area. It also describes cattle grazing from late spring until fall and states that permitted use is not presently in balance with grazing capacity (LRMP p. 36). Standards and guidelines for EMA 10 are to identify territories for sensitive species, formulate management objectives and desired conditions, and to prepare a biological assessment and evaluation to document the effect the selected action from an EA or EIS on viability of population of the sensitive species in the EMA (S&Gs 2, 5, and 10 pp. 38-39). Forest-wide direction is to improve habitats for sensitive species (LRMP p.18).

The 1988 survey document describes the populations on the Tusayan Ranger District (pp.2, 3) found growing in pinyon-juniper woodland and associated grass and shrublands along with four-wing saltbrush, and winterfat (p. 23) which appears to be the primary habitat, with lower frequencies on higher elevations. Highly reliable indicators of habitat suitability for this species were other calciphilic species such as four-wing saltbrush, winterfat, and needlegrass (pp.23-24). It was found in pockets where sagebrush was the dominant shrub. Anita, Moqui and Cameron allotments were listed as three of the four allotments on Tusayan RD in the primary range of *C.molestus* (p. 27). The effects of grazing were obvious and clearly described, such as “hedging” (p.27). Cattle and elk were assessed as the greatest single determinant of height, size, habit and vigor of the plants, while antelope and deer had lesser impact. Stocking level, length of grazing season and animal distribution are probably the most important parameters determining the severity of impacts to the species from livestock, with season of use and management system having significant additional effects (p.30). The availability, abundance,

and condition of other winter browse plants in an area may be an important determinant of *C.molestus* use (p.32). Elk grazing is one of the more significant impacts on the species (p.34), and overlapping areas of elk grazing with livestock use was where the species was in its most seriously degraded conditions (p.46, Preliminary Survey for *Chrysothamnus molestus* on Tusayan and Chalender Ranger Districts, December 1988, by Renee Galeano-Popp, not in record).

Finding: Although a specific sensitive species evaluation per FSM was not completed for *C. molestus*, the EA predicts improved browse production and frequency of desirable species such as fourwing saltbush and winterfat which are found in the same vegetative community as *C.molestus*. The shift to summer grazing from winter grazing along with increased rest and deferment is expected to improve overall browse habitat which will benefit fourwing saltbush, winterfat and *C.molestus*. Therefore the proposed action complies with the Forest-wide plan direction by improving browse habitat which includes *C. molestus*. The analysis of effects on browse species including *C.molestus* in the record provided sufficient information for an informed project decision.



File Code: 1570-1/2200
Route To:

Date: February 8, 2005

Subject: Appeal #05-03-07-0006-A215, Anita, Cameron and Moqui Allotments, Kaibab National Forest.

To: Michael R. Williams, Appeal Deciding Officer

This is my recommendation on the disposition of the two appeals filed in protest of the Decision Notice and Finding of No Significant Impact concerning the Anita, Cameron, and Moqui Allotments, Tusayan District, Kaibab National Forest.

District Ranger Richard Stahn signed the decision on October 8, 2004. The District Ranger is herein termed as the Responsible Official. Appeals were filed by Billy Stern, Forest Guardians¹, and Greta Anderson, Center for Biological Diversity², under the 36 CFR 215 appeal regulations.

Informal Disposition

Pursuant to 36 CFR 215.17, an attempt was made to seek informal resolution of this appeal. The record reflects that informal resolution was not reached³.

Review and Findings

My review was conducted in accordance with 36 CFR 215.19 to ensure that the analysis and decision are in compliance with applicable laws, regulations, policies, and orders. The appeal records, including the appellants' issues and requests for relief have been thoroughly reviewed. Having reviewed the Environmental Assessment (EA), decision, and the project record file, as required by 36 CFR 215.19(b), I conclude the following:

1. The EA misidentifies the plant (Chrysothamnus molestus⁴), identifying it as a "Species of Concern"⁵ rather than a Region Sensitive Species⁶, therefore there is no clear Effects Determination statement within the EA⁷ or the BE⁸ as required by FSM 2672.42(5). The KNF LRMP stress "Identify and protect areas that contain threatened, endangered, and

¹ Record Item #77

² Record Item # 78

³ Record Item # 80 & 81

⁴ Common names: Arizona, Tusayan, & Disturbed Rabbitbrush.

⁵ Record Item #75 page 36

⁶ 2670: Sensitive Species List Revision, July 21, 1999

⁷ Record Item #75

⁸ Record Item #73



sensitive species of plants and animals⁹ and one Forest Plan standard for EMA 10 is to analyze the effects on sensitive species within a BE (LRMP pp. 38-39). Although a specific sensitive species evaluation per FSM was not completed for *C. molestus*, the EA predicts improved browse production and frequency of desirable species such as fourwing saltbush and winterfat which are found in the same vegetative community as *C. molestus*. The shift to summer grazing from winter grazing along with increased rest and deferment is expected to improve overall browse habitat which will benefit fourwing saltbush, winterfat and *C. molestus*. Therefore the proposed action complies with the Forest-wide plan direction by improving browse habitat which includes *C. molestus*.

2. The clearance from State Historical Preservation Office for reconstruction of 21.5 miles of fence and maintenance of existing tanks must be obtained prior to implementation as referenced in the EA (p.83).
3. The monitoring discussions in the Allotment Management Plan and Annual Operating Instructions modifying on/off dates and season of use of livestock grazing as outlined in the EA (pp.15, 70, 72), should follow an Adaptive Management strategy (FSH 2209.13 Chpt. 92.23b).

Recommendation

I recommend that the Responsible Official's decisions relating to this appeal be affirmed with these instructions.

Signed, Appeals Reviewing Officer

Hard copy of this letter to be attached to ADO letter sent to appellants.

/s/ Keith L. Graves
KEITH L. GRAVES
District Ranger

cc: Constance J Smith, Stu Lovejoy

⁹ Kaibab Amended National Forest Land Management Plan 1996