



United States
Department of
Agriculture

Forest
Service

Santa Fe National Forest

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File Code: 1570-1/2200

Date: November 18, 2004

Billy Stern
Forest Guardians
312 Montezuma Ave. Suite A
Santa Fe, NM 87501

CERTIFIED LETTER
RETURN RECEIPT REQUESTED

RE: Appeal #05-03-10-0002-A215, Pollywog, Chiquito, Llaves, Ojitos, and Gurule Allotments, Cuba Ranger District, Santa Fe National Forest

Dear Mr. Stern;

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 livestock grazing on 5 allotments as follows:

- Chiquito Allotment for 450-1200 Animal Unit Months from 5/15 to 11/30,
- Gurule Allotment for 450-850 Animal Unit Months from 5/1- 11/15,
- Llaves Allotment for 800-1500 Animal Unit Months from 5/1-12/31,
- Ojitos Allotment for 250-950 Animal Unit Months from 5/1-11/30, and
- Pollywog Allotment for 800-1500 Animal Unit Months from 5/1-12/31.

BACKGROUND

District Ranger Steve Romero made a decision on August 18, 2004 to approve livestock grazing on the above 5 allotments for the Cuba Ranger District, Santa Fe 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 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 Chiquito, Gurule, Llaves, Ojitos, and Pollywog Range Allotments.

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

Sincerely,

/s/ Gilbert Zepeda
GILBERT ZEPEDA
Forest Supervisor

cc: Steve F Romero, David M Stewart, Berwyn Brown, Allen Fowler, Mailroom R3 Santa Fe, Constance J Smith, Mark Catron

REVIEW AND FINDINGS

of

Billy Stern's Forest Guardians

Appeal #05-03-10-0002-A215

ISSUE 1: The EA and Decision violate NEPA and APA by making significant and arbitrary increases in the permitted levels for allotments.

Contention A: Permitted levels for two allotments have increased as compared to those discussed in the June 2004 EA and allow for a range of grazing on each allotment that is unsupported by evidence. Even with improvements to alleviate current problems there is still no rationale included to justify the proposed increases. The Decision Notice would allow livestock numbers that are 157-475 percent over currently permitted numbers and more than double the actual use numbers. No allotment on the Santa Fe has shown soil and vegetative trends improve where stocking numbers have been raised 150-900 percent.

Response: The proposed stocking levels were set based on 10-year stocking records, 10-30 year precipitation records (PR#28), and AUM capacity calculations (PR#24). The record reflects the range of numbers that will provide for adaptive management strategies in response to fluctuating moisture patterns and corresponding vegetative production.

Finding: The record contains information documenting grazing capacity on the allotments. The analysis supports the decision and numbers; no large increases are planned. The EA and decision do not violate NEPA or APA.

Contention B: There is a lack of clarity on current management and the extent of changes in the proposed actions. In the June 2004 EA, Table 2 on page 6 fails to quantify the number of head months currently used, as did Table One on page 6 of the March 29, 2004 proposal. The final EA includes a similar table on page 11 which misrepresents the Authorized Use Range showing numbers above the actual use and permitted use. The timing of when the livestock will be permitted on the allotments is not clear, the use of normal season would presumably allow use outside the norm. Even under adaptive management there must be absolute limits on grazing or a clear statement under what conditions those variations from the norm will occur (FSH 2209.13_92.23b).

Response: Current management is illustrated in Table 3 of the final EA (PR#35) on page 11. This can be compared with Tables 5 and 6 on pages 17 and 18 of the final EA, to compare the active alternatives with current management. Page 5 of the final EA, under section 1.1 Proposed Action, explains the Season of Use, noting that "range readiness will be the primary determining factor for earliest entry dates and those dates may be adjusted annually up to two weeks earlier than the dates listed or to delay entry by 30 days. Season end dates may occur 30 days prior to or after the listed date, depending on ecological conditions as determined through monitoring, including forage utilization levels."

The table on page 11 lists “Authorized AUM Range”. This may appear higher than actual use and permitted use, if you are comparing “head months (HMs)” to “animal unit months (AUMs). One cow/calf unit is equal to one head month, but is equal to 1.32 AUMs. There is a definition of AUMs in footnote 2 on the bottom of page 5 of the EA (PR#35)

Finding: The final EA provides clear comparison tables of current management and proposed actions and clearly defines the timing of grazing allowed under adaptive management. The table on page 11 accurately displays Authorized AUM Range. There is no requirement that it needs to be presented in terms of head months.

ISSUE 2: The Decision violates the NFMA and the Santa Fe Forest Plan

Contention A: The EA and Decision Notice fail to note how this decision fulfills the management objectives specified for the areas within these allotments.

Response: The allotments contain lands identified as suitable for domestic livestock grazing in the Santa Fe National Forest Plan and continued domestic livestock grazing is consistent with the goals, objectives, standards, and guidelines of the forest plan” (PR#35, EA p. 6).

Forest Plan Goals related to Range are in the Santa Fe Land and Resource Management Plan (LRMP) on pages 19 and 20 (PR#1). They are:

Cooperate with private ranch owners and other agencies to develop coordinated range management systems of livestock grazing to balance permitted use and grazing capacity.

Provide a program of range management that emphasizes high quality range forage.

Every Management Area covered by the project (G, I, L, R and S) permits livestock grazing (PR#1, pp. 122, 137, 148, 167 and 172). The standards and guidelines appropriate to range management and specific to these management areas are identified in the EA under Management Direction (PR#35 pp.11-12).

This project was disclosed in the schedule of proposed actions in November 2003 (PR#3). There is no requirement to link individual projects to programmatic output levels.

Finding: Permitted livestock grazing is an appropriate use of the Santa Fe National Forest in the areas where it is proposed. Management direction from the LRMP is appropriately identified and used in the project analysis and design.

Contention B: The Forest Service violated NFMA’s mandate to identify the alternative that maximizes public benefit. Livestock grazing from strictly an economic efficiency standpoint does not serve the broader public interest as shown in literature such as Loomis 1991, Souder 1997, and the FS publication GTR-INT-224. By failing to conduct a cost/benefit analysis for all uses of the land rather than just for elk hunting and watching, the FS failed to consider whether permitting grazing on this allotment makes economic sense despite the requirement of 36 CFR 219.3.

Response: A determination of agency policy of grazing on National Forest System lands is outside the scope of this decision. The Santa Fe LRMP allocated lands for grazing activity in Management Areas G, I, L, R, and S, located within the project area, balancing permitted livestock with grazing capacity. Grazing has not been prohibited in any Management Areas located within the project area (PR#1 LRMP pp. 122, 123, 134, 148, 167, 168, and 172). The grazing allotment EA purpose and need statement is to authorize livestock grazing in a manner that moves toward Forest Plan objectives and desired conditions (PR#35 p. 6).

Finding: There is no requirement to evaluate an alternative at a project level that maximizes public benefit. That is a Forest Plan requirement. The alternatives evaluated meet the purpose and need statement for economic analysis and are consistent with Forest Plan objectives.

Contention C: The appellant asserts that the decision fails to manage riparian areas to achieve recovery, and to make the health of riparian areas a priority, and in so doing violates both the Forest Plan and Regional Guide.

Response: The Regional Guide for the Southwestern Region (1983) was either incorporated into Forest Plans or dropped as guidance (see *Federal Register* Notice, 66 FR 65463, December 19, 2001).

Reports in the record and the EA describe the condition of perennial streams and riparian areas (PR#35 p. 28, PR#'s 6, 7, 16, 17, 19, and 26). Mitigation measures are listed for soil, water and vegetation (PR#35 pp. 18-19, 29). Riparian resources were listed as an issue in the EA (PR #35 p. 13) and alternatives were evaluated for effects to riparian. Cattle grazing in Alternative 3 is anticipated to have little direct or indirect effect on riparian areas due to the implementation of mitigation measures combined with time limits to authorized grazing. These actions will facilitate riparian area recovery and recruitment of riparian dependent species (PR #35 p.28).

Finding: Continued riparian improvement is ensured under Alternative 3 and there is no violation of the Santa Fe National Forest Plan.

Issue 3: The decision violates the NFMA requirements to maintain viable numbers of all species.

Contention A: The appellant contends the Forest Service must manage sensitive species to sustain viability and prevent the need for listing. In addition, the Forest Service must manage fish and wildlife habitat to maintain viable populations of native species. The appellant believes the Forest Service has failed dramatically in its efforts to protect riparian obligate species and their riparian habitats as a result of continued livestock grazing.

Response: Direct, indirect and cumulative effects to Forest Sensitive Species are assessed in the Biological Assessment/Evaluation, Wildlife Affected Environment, and the Environmental Assessment (PR#'s 31, 21, and 35). Effects are disclosed for the sensitive species of peregrine falcon and northern goshawk (PR#35, pp. 33-34, 37-38). Grazing would not cause a trend towards federal listing or decrease the overall population of peregrine falcon or northern goshawk. Sensitive plant species are addressed in the Biological Assessment/ Evaluation (PR#31 p.4).

Riparian conditions were identified as an issue in the analysis and all alternatives were developed in part to improve riparian conditions (PR#26, 35, pp. 2-16 -18). See response to earlier riparian issue (Issue 2, Contention C).

Issues related to threatened and endangered species are discussed under Issue 7 elsewhere in this review. The issue of MIS population viability is addressed below under Contention 2B.

Finding: The Forest determination that sensitive species viability will be maintained and there is no trend towards federal listing is supported by documents in the project record and the EA analysis. Based on the review of the project record, the Forest did not violate the NFMA requirement to maintain viable numbers of all species.

Contention B: Population survey data of Management Indicator Species (MIS) are needed to ensure the maintenance of minimum viable populations of wildlife. The appellant asserts that since the Forest Service lacks quantitative monitoring data on many, if not all, MIS in the planning area and the Forest as a whole, and the scant data that it does have indicates some species are declining, the agency's decision is arbitrary and capricious.

Response: Population trends and habitat status for all Santa Fe National Forest Management Indicator Species (MIS) are evaluated and disclosed in the 2003 Forest MIS Species Assessment (PR#'s 21) and in the EA (PR#35, pp.34-35). Selection of affected MIS species is outlined on page 34 of the EA (PR#35) and page 2 of the Wildlife Affected Environment (PR#21). The Wildlife Specialist's Reports (PR#'s 31 and 21) and the EA (PR#35, pp. 33-39) describe project-level effects to 6 MIS species (MSO, Merriam's turkey, hairy woodpecker, Rocky Mountain elk, mourning dove, and pinyon jay) as well as migratory birds.

A summary of effects on the six MIS species that were analyzed for these five allotments follows:

- MSO – (see discussion under ISSUE 7)
- Merriam's turkey – Turkey populations are considered secure-common within the lower elevations of the allotments (PR#35, pp.34 – 35). The proposed grazing activities would not influence the population status or trend for this species on the Santa Fe National Forest (PR#35, pp. 3-38).
- Hairy woodpecker – Population is ranked as abundant for the Santa Fe National Forest. Surveys conducted by the USGS between 1968 and 1998 indicate a stable or increasing trend for hairy woodpecker statewide (PR#35 p.35). There would be no change in the overall population trend for this species under the action alternatives proposed (PR#35 p.38).
- Rocky Mountain elk – The trend for elk habitat on the forest is rated as stable and the population trend is ranked as increasing on the Forest. The allotments fall within hunt Unit 5b, which is one of the six units in the larger Chama-Tres Piedras area. Population estimates for the six units has decreased from a high of 12,500 in 1997 to 9,200 in 2002. The target population for elk in this area is 9,100 (PR#35, p.35). The current population

of elk for these allotments is still above the target population. Overall, elk populations on the Santa Fe National Forest are stable to increasing. Actions proposed under Alternatives 2 and 3 would benefit elk because cattle would be better distributed and there would be less concentration of cattle in a given area that could lead to competition for forage (PR#35, p. 38).

- Mourning dove – The habitat trend for the mourning dove is considered stable to increasing across the Forest (PR#35, p.35). There would be no measurable impact from grazing to population trends (PR#35 p. 38).
- Pinyon jay – The habitat trend for pinyon jay is ranked as stable and the population is ranked as common on the Forest but few are expected to occur on these allotments due to lack of habitat (PR#35, p. 35). The proposed activities are not expected to have negative impacts on the overall population trends for the pinyon jays in the analysis area (PR#35 p.38).

The Forest MIS assessment contains records of surveys completed by the Forest or its partner agencies such as New Mexico Department of Game and Fish (NMDGF) and US Geological Survey (USGS) as part of the continental-wide breeding bird survey (BBS). Population trends and population viability are described at the broad scale (Statewide) and regional (Forest-wide) levels. NMDGF elk management information, including population estimates, is included in the record (PR#’s 21 and 35, p.35).

For MIS species, the EA (PR#35 pp.37 – 38) concludes that the proposed action will maintain or improve suitable habitats for MIS, and that Forest population trends (numbers) would allow for populations to remain at current levels or increase.

Finding: The record contains sufficient information to determine population trends of MIS. The Forest completed an analysis of MIS that was sufficient to ensure that minimum viable populations would be maintained. Both population viability and project level effects are analyzed and displayed.

Contention C: The Forest Service violated NFMA by continuing to allow cattle grazing on the allotment without first evaluating the allotment’s suitability for grazing. The Forest Service must determine in Forest planning the suitability and potential capability of the National Forest System lands 36 CFR 219.3. Absent a suitability analysis, the appellant contends that the Forest Service failed to discharge its obligation under NFMA to take a hard look at each alternative; and, therefore, the choice of any alternative is premature.

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. The EIS for the Santa Fe National Forest LRMP page 102 describes acres considered suitable for rangeland.

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 Santa Fe National Forest LRMP.

ISSUE 4: **The grazing allotment Term Permit issuance must be suspended until the Santa Fe National Forest revises its Land and Resource Management Plan and until the Forest Service develops a renewable resources program.**

Contention: The appellant contends there is no legally adequate RPA program or land and resource management plan to which the grazing allotment term grazing permit issuance project can be tiered. Term permit must be suspended until the Forest publishes a new FEIS supporting a revised LMP.

Response: There are no statutes or regulations that describe an expiration date for the Forest Service Renewable Resource Program or Land and Resource Management Plans. A recent court decision in Wyoming upheld the use of the current Plan until revised (*Biodiversity Assoc. v. USFS*, decision September 30, 2002). Also, language in the 2004 appropriations bill for the Forest Service allows that (section 320). “Prior to October 1, 2004, the Secretary of Agriculture shall not be considered to be in violation of subparagraph 6(f)(5)(A) of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1604(f)(5)(A)) solely because more than 15 years have passed without revision of the plan for a unit of the National Forest System.”

The Santa Fe Land and Resource Management Plan, which has been amended seven times since its issuance, will remain in effect until it is revised, consistent with the requirements of the National Forest Management Act and implementing regulations.

Finding: The current plan is in effect until the revision process is completed. There are no requirements to suspend activities until the process is completed.

ISSUE 5: **The project does not meet the requirements of NEPA.**

Contention A: The appellant contends that a range of reasonable alternatives, as required by NEPA implementing regulations, was not analyzed. The EA fails to take a hard look at potential effects of the proposed action and the no grazing alternative. By examining only one action alternative and refusing to analyze others that result in lower stocking rates, the FS has violated NEPA requirements to address a range of reasonable alternatives that not only emphasize different factors but also lead to differing results. The agency threw out a viable alternative that we suggested because we did not provide site specific information on conditions, even though there are areas with unsatisfactory conditions in each of the allotments.

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)).

Scoping was conducted and comments on the proposal were received. During the comment period, the appellant suggested an alternative that looks at how a 30-70 percent reduction in grazing would affect soil quality, vegetation, water quality, riparian areas, wildlife habitat, along with costs (PR#20).

This proposal was discussed by the interdisciplinary team in reviewing public comments. Rationale was given for not carrying the alternative through detailed analysis. For this comment, it was noted that the proposed action incorporates a 65 percent reduction on the Ojitos Allotment and a 32 percent reduction on the Chiquito Allotment. The proposed action also incorporates adaptive management on all allotments that takes into consideration changes in range readiness, precipitation, and forage production. Under adaptive management, stocking on these allotments could fall to 70 percent in any given year – and similarly could increase to 130 percent in a given year (PR#22).

No key issues were identified. A list of non-issues and reasons regarding their categorization is in the project record (PR#22). Other issues were noted and discussed in the EA. The Determination of Substantive comments report also considered this reduction in grazing alternative and responded that the Forest Guardians alternative was not analyzed in detail because reductions are included under adaptive management, and those reductions would be based on monitoring and site-specific resource conditions (PR#34 p.4).

The EA circulated for public comment on June 16, 2004 also discussed the appellant's suggested alternative under Alternatives Eliminated from Detailed Study. The reason for eliminating the alternative from detailed study was because it is similar to the proposed action, which already incorporates reductions from historic levels (PR#29 p.10).

In the EA accompanying the decision notice, this alternative was addressed under the category of permit administration along with other proposals. These alternatives were dropped from detailed study because the proposed action and preferred alternative provide management flexibility that may require reductions or support increases in grazing permit authorizations (PR#35 pp. 15-16).

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

Contention B: The FS has violated NEPA because the EA fails to consider and disclose adequately the location and protocol for monitoring key forage utilization areas within the allotment. The appellant contends the EA must disclose the names, locations, forage utilization limits, and monitoring protocol for each and every key area within the allotments.

Response: Proper forage utilization standards are employed to sustain such things as plant health and vigor, long-term soil productivity, and protection for threatened, endangered, and sensitive species and their habitats. 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.

There are grazing utilization standards in the Santa Fe LRMP (PR#1, Appendix D). The guidelines are to develop site-specific forage use levels in consultation with US Fish and Wildlife Service. In the event that site-specific information is not available, average key species forage utilization in key areas by livestock and wildlife should not exceed levels set forth in the allowable use guide table on page 12 of Appendix D. The Biological Assessment and Evaluation says the allowable use by livestock will be limited to 40 percent or less within MSO Proposed Critical Habitat (PR#31, p. 2). The EA states that three pastures with riparian corridors would be managed at a 20% utilization level (PR#35, pp. 28 and 29).

There is no NEPA requirement to disclose the names and locations of key areas. However, current key area locations are included in the project record (PR #13, see proposed action maps). As stated in the Determination of Substantive Comments, these key areas may change from year to year to ensure that they represent forage use that occurs in a given year (PR#34 p.4).

Finding: There is nothing in federal statutes, regulations, or Forest Service policy that requires the Responsible Official to disclose the names and locations of each and every key area within an allotment in an EA. Utilization standards and monitoring protocol for the grazing allotment were developed in accordance with Forest Service policy and through USFWS consultation.

Contention C: The utilization standards on these allotments are unacceptable, since they contain habitat for the Mexican spotted owl. The utilization standards in riparian areas containing Mexican spotted owl habitat should never be more than 20 percent in order to ensure the recovery of the species (appellants reference a Coconino National Forest document that was not attached). Also, the proposed dormant season utilization figure of 60 percent is unusually high.

Response: The USDA Guidance Criteria (USDA-FS, 2004—not in project record, but readily available), does not require a 20 percent utilization level. It requires a conservative stocking level to be maintained (defined as 31-40 percent utilization), in order to provide the woody and herbaceous vegetation necessary for cover for rodent prey species, the residual biomass that will support prescribed natural and ignited fires that would reduce the risk of catastrophic wildfire in the Forest, and regeneration of riparian trees.

The EA (PR#35, pp. 18-19) documents that livestock grazing will be managed at a level corresponding to conservative intensity, and that key herbaceous riparian vegetation will have a minimum stubble height of four inches on the stream bank, along the green line, after the growing season, and during spring runoff. In addition, the EA notes that three pastures containing small riparian corridors would be managed at a 20 percent utilization level (PR#35, p. 29).

The Biological Assessment/Evaluation made a determination of No Effect on the Mexican spotted owl or on its proposed critical habitat (PR#31). It states that cattle grazing does not occur within the Golondrino Protected Activity Center (PAC) due to steep, inaccessible slopes, and no range improvements are proposed in the PAC, thus there would be no associated

construction disturbance. In addition, it states that where grazing does occur in proposed critical habitat (in less than 20 percent of the total proposed critical habitat), mitigation measures and monitoring will ensure use does not exceed established utilization standards. The proposed critical habitat consists of ponderosa pine and mixed conifer; there is no riparian vegetation within this habitat type in the project area.

Finding: The utilization standards proposed in the EA meet 2004 guidance criteria for Mexican spotted owl. Mitigation measures and monitoring will ensure this standard is implemented.

Contention D: The Forest Service violated NEPA by failing to consider and disclose the cumulative impacts of the proposed action. The appellant contends that the cumulative effects of the alternatives were not adequately addressed, considering past, present, and reasonably foreseeable activities, as required by NEPA. Appellant states that the EA contains virtually no analysis of cumulative effects and the EA does not even attempt to catalog other activities occurring within the allotment's boundaries.

Response: Past, present, and reasonably foreseeable future activities used for consideration of cumulative effects are disclosed in the EA on pages 23 and 24 (PR #35). These included activities and land uses within or in close proximity to the allotments, and foreseeable future activities only include those that have been proposed for NEPA analysis in the near future or with a NEPA decision. Other possible future actions were considered too speculative to include in the cumulative effects analysis.

Resource areas identified are oil and gas, vegetation management, recreation, fire and road management. These resource areas included consideration of activities on private lands. Cumulative effects are discussed by resource area in the environmental consequences disclosures that follow, through page 43 of the EA. Cumulative effects were specifically considered for soils, water/riparian, air, vegetation, wildlife, heritage, and recreation resources.

Other documents in the record that address cumulative effects include:

- Field trip and IDT notes including discussion of past and ongoing activities in the area (PR#'s 4 and 13),
- Internal scoping (PR#7),
- BMG Pipeline proposal (PR#9),
- Range records (PR#28), and
- EA circulated for public comment (PR#29, pp. 17-43).

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

Contention E: The FS has violated NEPA because the EA fails to consider the full economic implications of this action. With elk forage use and elk hunting a key issue, the EA fails to analyze wildlife and fish user days and how they will be affected. Although the methodology for considering user days is not clear, hunting and other recreation use has an impact on the local economy that the EA must consider.

Response: Projects such as the grazing allotment are developed to be consistent with the direction described in the Forest Plan. 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 proposed action is the implementation of previously approved practices that are included in the current Santa Fe LRMP. The responsible line officer determines the scope, appropriate level and complexity of economic and social analysis needed (FSM 1970.6).

Comments received on the EA did not surface any significant flaws in the economic analysis methodology. (PR#'s 20, 22, 33, 34, 35) The economic effects of the project were identified by numerous responses during scoping (PR#20) and identified as a non-key issue for the analysis (PR#22).

With respect to costs and benefits of elk forage and elk hunting, the appropriate level for determining resource output tradeoffs is at the Forest level. The number of hunting permits and wildlife population numbers vary from year to year based on habitat conditions and management goals. The economic effects of wildlife use where there is a trade-off with other multiple uses must be made at the Forest Plan level. (Also see Issue 2, Contention B.)

Finding: The economic analysis is consistent with regulation and manual and handbook direction for project-level decision making and is not in violation of applicable laws, regulations or policy.

Contention F: The EA fails to address grazing and its effects on invasive/non-native species. Despite scientific articles listed, the EA fails to consider this issue.

Response: The presence of invasive species were noted in field review of the project area (PR#4) and discussed in meetings (PR#'s 11 and 13). The fact that a larger-scale NEPA effort addressing invasive species is underway with a draft EIS was considered by the IDT and Responsible Official (PR#'s 11, 13 and 32).

Scoping did not identify grazing and its effects on invasive/non-native species as a key issue. Two commenters mentioned invasive species; one seemed to oppose treatment of musk thistle under this proposed action while the appellant's comment included it (PR#20). There seemed to be no comment on invasive species in response to the EA routed for comment (PR#33).

Control of invasive plant species is identified as part of the purpose and need for action and in the proposed action (EA PR#35, pp. 7 and 9). The presence of invasive species is addressed in the consideration of cumulative effects in the EA (pp. 23 – 24), and in the EA affected environment for vegetation (pp. 31 – 32). The likely effect of removing cattle on the spread of invasive species is disclosed in the environmental consequences section of the EA (p. 32).

Finding: Invasive species were identified and assessed in the environmental analysis. The effect of the presence of cattle on their spread was disclosed. Measures are planned to control their spread in this project and in on-going planning on the Forest.

ISSUE 6: The decision violates the Multiple Use and Sustained Yield Act.

Contention: The appellant alleges that the decision violates the Multiple Use and Sustained Yield Act by failing to manage for the highest public benefit. The appellant further alleges that the decision will continue to impair land productivity.

Response: Management of National Forest System lands for the highest net public benefits was analyzed and decided upon in the preparation of the Santa Fe LRMP (PR#1). Net public benefits were analyzed appropriately during the Forest Plan's preparation and are outside the scope of project-level analysis. The EA provides a summary of Forest Plan Management Areas G, L, I, R and S, which are located within the project area and their management emphases (PR#35, pp 11-12).

In reference to the contention that the decision will continue to impair land productivity, the EA analyzes the effects of the selected alternative on the various resources. The effects of Alternative 3 are described as having slight or gradual improvement or no change on the various land and water resources (PR#35, pp 23-43). The effects analysis clearly demonstrates improvement in land productivity.

The Decision Notice (PR#35 p.1) states that Alternative 3 best meets the purpose and need in the EA. It will:

- Provide for management flexibility to respond to changing resource conditions as well as provide for satisfactory range management status and allow for more even distribution of livestock by incorporating adaptive management strategies,
- Improve soil retention and vegetative growth along arroyos by constructing restoration dams in two arroyos on the Chiquito and Pollywog allotments,
- Control invasive plant species by hand treating occurrences of musk thistle, and
- Provide for unimpeded and safer wildlife travel by removing four miles of unneeded fence on the Llaves allotment.
- Contribute to the socio-economic needs associated with traditional grazing in northern New Mexico (Santa Fe Forest Plan pp. 17, 82) and agency policy objectives for National Forest range management programs (Forest Service Manual 2202.1).

Finding: This decision will improve land productivity and is, therefore, consistent with the Multiple Use and Sustained Yield Act.

Issue 7: The Decision violates the Endangered Species Act.

Contention: Habitat conditions on allotments show that quality is severely compromised and so to continue to allow grazing in areas so severely degraded is a clear violation of ESA. It is unclear whether consultation took place after the original EA or after the second EA. The second EA provides for higher livestock numbers and that should have been used in consultation.

Response: Section 7(a)(2) of the Endangered Species Act requires Federal agencies to "insure that any action authorized, funded or carried out by such agency is not likely to jeopardize the

continued existence” of threatened or endangered species. Effects to threatened and endangered species are assessed in documents found in the project record, including the Biological Assessment/Evaluation (PR#31) and the EA (PR#35, pp.33–39). Informal consultation with USFWS occurred on June 21, 2004 (PR#31, pp 1, 3) after the first draft EA was sent out for public review and comment on June 16, 2004 (PR#29). (Higher livestock numbers have been addressed in Issue 1, Contentions A and B.) The proposed action that was informally consulted on in June is similar to the proposed action that is discussed in the final EA.

Part of the Purpose and Need statement in the EA indicates that improvements to grazing management and watershed conditions are needed to move towards desired conditions (PR#35, pp.1-7). Range condition status is identified in Table 3 of the EA (PR#35, p.11) and soil condition ratings are identified in Table 8 (PR#35, p. 25). The proposed action addresses improvements to these areas and a move towards desired conditions (PR#35, pp. 16-22).

Finding: Informal consultation occurred as required under the Endangered Species Act. All legal requirements of the Endangered Species Act have been met. Improvements to range and watershed conditions were identified by the Forest and addressed in the EA.

Issue 8: The EIS violates the Administrative Procedures Act.

Contention: Given the current degraded condition of the land due to historical and ongoing livestock grazing, the decision to continue to graze the land is inexplicable. The preferred alternative does not represent a reasoned and rational decision. To continue livestock grazing would likely be considered an arbitrary and capricious decision under the APA. The most expeditious recovery of riparian habitat and watershed conditions would be the no-grazing alternative and that should be implemented.

Response: The EA/DN/FONSI and documents in the record disclose the analysis done to evaluate resource conditions on the allotment and the effects of alternatives considered. Although Alternative 1 would result in the most beneficial effects to riparian areas, Alternatives 2 and 3 would have little direct or indirect effect on riparian areas due to the implementation of mitigation measures combined with limiting authorized grazing to a short period of time within riparian pastures. These actions would facilitate riparian area recovery and recruitment of riparian dependent species (PR#35, pp. 28 – 29).

Alternative 1 would also have the least effect on soil with little change in soil condition as permits expire and grazing ceases. Impaired soils in Alternatives 2 and 3 are expected to continue on an upward trend as native grasses continue to re-establish in previous sage treatment areas. Restoration activities along a drainage identified in Alternative 2 would improve conditions in the area by stabilizing the downcutting that is currently occurring. Reduction of AUMs and construction of a water development would address impaired soils and improve soil condition (PR#35, pp. 25 – 26). Effects of Alternative 3 would be similar to Alternative 2. Construction of four retention dams in an arroyo would over the long term deter downcutting in the arroyo, increasing soil retention and vegetative ground cover (PR#35, pp. 3-27).

The DN/FONSI gives extensive references to the EA for rationale used to select Alternative 3 which best meets Purpose and Need, moves towards desired conditions, and balances the 5 issues (PR#35).

Finding: In the DN/FONSI for the Chiquito, Gurule, Llaves, Ojitos, and Pollywog Allotments, the Responsible Official properly assessed the issues, public input, and impacts to resources in his decision rationale. The Responsible Official made a reasoned and informed decision based on the analysis and has not violated the Administrative Procedures Act.



United States
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File Code: 1570-1

Date: November 5, 2004

Route To:

Subject: ARO, Appeal #05-03-10-0002-A215, Chiquito, Gurule, Llaves, Ojitos, and Pollywog Allotments Decision, Cuba Ranger District, Santa Fe National Forest

To: Forest Supervisor, Santa Fe NF, Appeal Deciding Officer

This is my recommendation on the disposition of the appeal filed in protest of the Decision Notice and Finding of No Significant Impact concerning the Chiquito, Gurule, Llaves, Ojitos, and Pollywog Allotments, Cuba Ranger District, Santa Fe National Forest.

District Ranger Steve Romero signed the decision on August 18, 2004. The District Ranger is herein termed as the Responsible Official. Forest Guardians filed an appeal of this decision 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 reached with Forest Guardians.

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 decision clearly describes the actions to be taken in sufficient detail that the reader can easily understand what will occur as a result of the decision.
- 2) The selected alternative should accomplish the purpose and need established. The purpose and need stated in the EA reflect consistency with direction in the Forest Plan for the Santa Fe National Forest.
- 3) The decision is consistent with policy, direction, and supporting evidence. The record contains documentation regarding resource conditions and the Responsible Official's decision documents are based on the record and reflect a reasonable conclusion.

- 4) The record reflects that the Responsible Official provided ample opportunity for public participation during the analysis and decision making process. The Responsible Official's efforts enabled interested publics the opportunity to comment and be involved in the site-specific proposal.

After considering the claims made by the appellant and reviewing the record, I found that the Responsible Official conducted a proper and public NEPA process that resulted in a decision that is consistent with the Santa Fe National Forest Plan. I found no violations of law, regulations, or Forest Service policy, however I have requested documents be added to the project record for clarification. The calculations for how the range of authorized AUM's for the proposed action for each allotment were determined should be placed in the project record.

Recommendation

I recommend that the Responsible Official's decisions relating to this appeal be affirmed with respect to all of the appellant's contentions.

/s/ Mark S. Catron

MARK S. CATRON
Appeals Reviewing Officer
District Ranger

Cc: Steve Romero, Ber Brown, Mailroom R3 Santa Fe, Connie Smith, Dave Stewart