



United States
Department of
Agriculture

Forest
Service

Santa Fe National Forest

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File Code: 1570-1/2200

Date: August 8, 2005

Greta Anderson
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**CERTIFIED MAIL – RETURN RECEIPT
REQUESTED No: 7004 2510 0005 5233 8799**

RE: Appeal #05-03-10-0009-A215, San Diego Allotment, Jemez RD, Santa Fe NF

Dear Ms. Anderson:

This is my review decision on the appeal filed regarding the Record of Decision (ROD), and Final Environmental Impact Statement (FEIS) on the above-referenced project, which provides for grazing of 252 cow/calf units during summer/fall, grazing of 117 cows during winter/spring, and 12 bulls authorized to graze year-round on 74,114 acres open to grazing under Alternative 3. Range facilities such as fences, pipelines corrals and water developments would be constructed.

BACKGROUND

Acting Jemez District Ranger Gary Ziehe made a decision on April 12, 2005, and published on May 20, 2005, for the Santa Fe National Forest on the San Diego Allotment 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 with one exception on riparian grazing utilization guidelines; 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 San Diego Allotment Project with the following modification:

In order to be consistent with the Section 7 consultation for the Mexican spotted owl, herbaceous forage utilization in riparian areas during the dormant season will not exceed the 40 percent guideline.

In addition the Responsible Official is directed to include the following documents in the record.

1. Jemez NRA Decision Notice/FONSI, and
2. Inventory Standards and Accounting form (R3-FS-2300-4) showing SHPO Concurrence and Clearance Approval signatures.

This decision constitutes the final administrative determination of the Department of Agriculture [36 CFR § 215.18(c)]. A copy of this letter will be posted on the internet on the Santa Fe Forest appeals listing by date (scroll to bottom of page) at:

http://www.fs.fed.us/r3/appeals/forest_santafe/forest_santafe_index.htm

Sincerely,

Clifford Dils
CLIFFORD DILS
Deputy Forest Supervisor

2 Attachments (Review and Findings, ARO letter)

cc:

Constance J Smith
Jamie Kingsbury
David M Stewart
Berwyn Brown
Allen Fowler
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Gary K Ziehe
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REVIEW AND FINDINGS

of

Center for Biological Diversity Greta Anderson's

Appeal #05-03-10-0009-A215

San Diego Allotment, Santa Fe National Forest

For the purposes of this review, contentions have been re-arranged from the original appeal order so that they fall under the issue where they are logically found under law, regulation and policy.

ISSUE 1: The Decision and the Environmental Impact Statement do not meet the requirements of the National Environmental Policy Act (NEPA).

Contention A: The appellant contends the purpose and need excludes all but the alternative of continued grazing which violates NEPA implementing regulations related to a “reasonable range of alternatives (Appeal, pp. 2-3).” The appellant asserts, “The purpose and need should have been set up to analyze whether or not grazing would fulfill the priorities of the law and the Forest Plan and, if so, how it should be managed (Appeal p. 3).”

Response: The NEPA implementing regulations at 40 CFR 1502.13 state, “The [environmental impact] statement shall briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action.”

When proposing to graze on National Forest System lands, the Forest Service Handbook (FSH 2209, chapter 92.22) directs, “At a minimum, a purpose and need statement for livestock grazing identifies why livestock grazing should be authorized on a given allotment(s) at the present time.”

The FEIS describes the purpose and need for this action, “to authorize cattle grazing in a manner that is consistent with the forest plan and attains or moves toward attainment of desired conditions” (PR# 82, p. 4). In addition, the FEIS (p.4) lists other reasons why the action is being proposed, including: a) the allotment contains lands identified as suitable for domestic livestock grazing in the Santa Fe National Forest Plan; b) Forest Service policy allows forage to be available to qualified livestock operators from lands suitable for grazing, to contribute to the economic and social well-being of people who depend on range resources for their livelihood; c) there is a need for change from current management as the allotment is not meeting or moving toward desired conditions in an acceptable timeframe; d) specific desired conditions not being met are related to the protection of nonrenewable archaeological resources.” Specific reasons for proposing certain actions to meet the purpose and need are listed in Table 1 of the FEIS (pp. 2-4).

In *Idaho Conservation League v. Mumma*, 956 F.2d 1508, 1520 (9th Cir. 1992), it states, "[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.'" For an alternative to be reasonable, it must meet the stated purpose and need and address one or more issues.

The purpose and need for action on the San Diego Allotment focused on livestock grazing and the relevant Forest Plan management areas allow grazing (see NFMA issue response).

Finding: The purpose and need was not so narrow as to exclude all but one alternative. The purpose and need meet the NEPA implementing regulations and agency direction.

Contention B: The appellant contends the agency failed to consider an alternative suggested by the public to seasonally close parts of the allotment. In addition, the agency dismissed an alternative that would close all riparian pastures and the decision to dismiss this alternative is not backed up with evidence (Appeal, p. 3).

Response: The NEPA implementing regulations at 40 CFR 1501.7 (a)(3) state "Identify and eliminate from detailed study the issues which are not significant or which have been covered by prior environmental review (Sec. 1506.3), narrowing the discussion of these issues in the statement to a brief presentation of why they will not have a significant effect on the human environment or providing a reference to their coverage elsewhere."

The first part of the appellant's contention is likely referring to an issue raised during the scoping process (PR #30, Sangre De Cristo Audubon Society letter). The record and the FEIS describe how comments received from the public were used to identify issues and significant issues (PR #5, #6, #31, #82, pp. 8-13). Non-significant Issue #14 is described, "Livestock should be rotated through pastures—using areas for relatively short periods of time to reduce impact to resources and disturbance to wildlife. Areas should be rested in the early spring growing season" (PR #82, FEIS, pp. 12-13). The FEIS has a detailed explanation of why this suggestion could not be effectively used to manage the allotment; therefore the suggestion was not identified as a significant issue or used to develop an alternative.

The NEPA implementing regulations state agencies shall, "Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated" (40 CFR 1502.14 (a)). The formulation of alternatives is driven by significant issues (unresolved conflicts) identified in scoping (40 CFR 1501.2(c)).

The FEIS lists five alternatives considered but eliminated from detailed analysis, including an alternative to eliminate grazing in riparian areas (FEIS, PR# 82, p. 24). Part of the reason given for elimination is that this alternative was brought forward and analyzed in detail in the earlier Jemez National Recreation Area Management Plan Environmental Assessment and Forest Plan Amendment. The previous analysis indicated that riparian areas were being protected as required in the Jemez NRA Act (PR#25 pp.36, 40-45). The San Diego Allotment FEIS incorporates the mitigations and monitoring requirements from the Jemez NRA management plan (PR#82 pp. iii and 25; Jemez NRA DN p.9, not in record). The EA for the management plan is included in the project record (PR #25) however the Decision Notice is missing.

Finding: The Responsible Official appropriately addressed issues and alternatives eliminated from detailed study.

Contention C: The appellant contends the effects of Alternatives 3 and 4 are essentially the same, therefore the Forest Service failed to analyze a range of alternatives (Appeal, p. 3)

Response: The formulation of alternatives is driven by significant issues identified during scoping (40 CFR 1501.2 (c)). In describing the alternatives section of an EIS, NEPA implementing regulations (Sec. 1502.14) state, “it should present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public.” Furthermore, “Agencies shall focus on significant environmental issues and alternatives (Sec. 1502.1).”

During the scoping process for the San Diego Allotment, one significant issue (effects of grazing on archeological sites) was identified and an alternative (Alternative 4) was developed to address it (PR #31, #82 p.19). Although environmental impacts may be similar between alternatives, the FEIS provided a clear basis for choice related to the effects on archeological resources (PR#82 pp.27, 60-62).

Finding: The Responsible Official met the requirements for identifying significant issues and formulating alternatives.

Contention D: The appellant asserts the FEIS does not make clear what conditions are imposed for Fenton pasture to be used in the future and there is no analysis of how using this pasture would affect its recovery (Appeal, p. 5). The appellant contends impacts relating to movement of the Virgin pasture fence are not adequately analyzed, the effects of enlarging the Upper Virgin pasture are not adequately described, and total acreage that would be open or closed to grazing is not stated in the FEIS (Appeal, p. 11).

Response: The NEPA implementing regulations require an EIS to, “provide full and fair discussion of significant environmental impacts and shall inform decisionmakers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment (40 CFR 1502.1). The NEPA regulations also state, “NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail” (40 CFR 1500.1(b)).

The proposed action includes extending a drift fence about ½ mile south of Fenton Pasture to prevent unauthorized use from cattle straying into this riparian pasture (FEIS PR#82 p.2). Riparian area grazing would be managed using standards developed in the Jemez National Recreation Area Plan (PR#82 p.2) and options to graze riparian areas are limited to emergency situations such as drought or water system failure or to accommodate routine pasture moves. Managing in this way would continue and encourage an upward trend in riparian area recovery (PR #82, p. 28). Under the proposed alternative, Fenton riparian pasture would continue to be rested yearlong but would be available for use on a contingency basis and if used, riparian mitigations would apply (PR #82, pp. 17, 25).

Selected Alternative 3 maintains the overall grazing management currently in place with no increase in the average annual authorization in livestock numbers and changes are related to facility construction and closure/rest of some pastures (PR #83, ROD, p. 2).

One of these changes is the relocation of the Upper Virgin/Lower Virgin pasture division fence, moving it approximately 1.5 miles south of its current location (FEIS PR#82 pp.17, 19, Appendix B Lower Virgin Pasture Map). This action would add approximately 1,000 acres of the Lower Virgin Pasture to the Upper Virgin Pasture, and would close the remaining Lower Virgin Pasture acres to livestock grazing. One effect would be to remove about 200 heritage sites from grazing disturbance (PR #82, FEIS, p. 60). Another effect would be to make more forage available in the northern portion of Lower Virgin Pasture (PR#82 p.2). Potential effects to vegetation and wildlife are described in the Wildlife Specialist Report for the San Diego Allotment (PR #35, p.19 & 20).

Finding: The analysis of effects on these two pastures was adequate for a decision to be made by the Responsible Official.

Contention E: The appellant contends the springs and seeps described in the EIS are not mentioned beyond the cattle fencing and that a map of their locations and more analysis is necessary under NEPA (Appeal, p. 12).

Response: The ROD directs that springs will be monitored and actions such as constructing fences will be implemented to exclude cattle. Springs and seeps that receive moderate to high cattle use will be fenced for protection (PR#83, p.4). This is repeated in the FEIS (PR #82, pp. 24-25). A map of these seeps and springs is not required under NEPA.

Finding: The analysis of seeps and springs is adequate for the decision being made.

Contention F: The appellant alleges there are no studies or summaries included in the EIS on soil condition or erosion to validate assertions of fair condition. Soil erosion standards are not discussed and whether the standards are met across the allotment. Personal communications that grazing impacts to soils are historic and not ongoing should be verified. The proposed action includes developing water sources on the Pajarito and Palomares pastures, which have unsatisfactory soils. With this development, cattle will be on these soils and analysis of the differences between the no grazing and the action alternatives are lacking in the EIS (Appeal pp.14-15).

Response: The record contains evidence of studies and assessments to support the existing soil condition ratings (PR# 82, pp. 34-35, and PR# 39, pp.2-3) and all land in the project area is rated. The erosion standards are described and areas not meeting standards are disclosed. The soil specialist report (PR# 39, p. 3) contains documentation regarding the professional observation that grazing is not exacerbating unsatisfactory soil conditions in the two pastures that currently rate as unsatisfactory. The report also contains observations regarding the source of the erosion (low herbaceous cover and roads).

The principal tool for managing cattle use in the Pajarito and Palomares pastures is the season of use and better distribution (PR# 82, pp. 16-17), with no increase in grazing intensity. In these

two pastures, use levels will be monitored and mitigation measures implemented to prevent negative impacts to soil (PR# 82, p. 39 and p. 25).

Finding: Soil impacts were adequately analyzed and disclosed.

Contention G: The appellant contends the Forest Service violated NEPA by failing to consider and disclose the cumulative impacts of the proposed action (Appeal, p. 16). The EIS addresses some historical grazing but not the ongoing effects of continued grazing. There is not adequate analysis of grazing impacts combined with increased recreation effects on archeological sites, riparian resources, wildlife resources, and protected areas.

Response: Cumulative impact is defined as the impact on the environment that results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions (40 CFR 1508.7). Actions that have no direct or indirect effects on a resource will not result in cumulative effects.

The project record includes discussions on the past, present, and reasonably future activities that contribute to cumulative effects. The Soil and Vegetation Report (PR #39) and the Wildlife Specialist Report (PR #35) include an analysis of recreation impacts in combination with ongoing grazing on riparian areas and wildlife habitat respectively. The Cultural Resources Report (PR #34) includes an analysis of recreation impacts in combination with ongoing grazing on archeological sites. The FEIS (PR #82, p. 42) cites the “Respect the Rio” document (PR #41), which provides details on recreation impacts along Rios Guadalupe, Cebolla, Jemez, and de las Vacas. Cumulative effects are summarized for the resources in the Chapter 3 of the FEIS (PR #82, pp. 31-66). The Jemez National Recreation Area Environmental Assessment (PR #25) also includes a cumulative effects analysis relative to grazing and recreation impacts.

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

Contention H: The appellant contends the EIS fails to provide a comprehensive economic analysis of the project. Economic costs and benefits of the project are not disclosed. The comments made by appellant on economic benefits to communities from no grazing were dismissed as being outside the scope of the analysis. The agency fails to consider the potential beneficial economic result of improving habitat and scenic value of the No Grazing Alternative 1 in the Jemez National Recreation Area (Appeal p.17).

Response: Projects such as the San Diego 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 responsible line officer determines the scope, appropriate level and complexity of economic and social analysis needed (FSM 1970.6).

The economic effects of the project were not raised during scoping (PR #30) and were not identified as a significant issue for the analysis (PR #82, FEIS, pp. 8-13). An Economic Analysis was conducted for the San Diego Allotment and incorporated into the FEIS (PR #40, PR #82, pp. 64-65). The appellant’s comment was considered in the EIS, identified as a non-significant

issue, and addressed through mitigation (FEIS PR#82 pp. 10-11). The economic analysis identified the benefit/cost ratios for all alternatives. A social analysis analyzed the effects on local residents (FEIS PR#82 pp.65-66). Recreation and scenery analysis in the FEIS shows that most conflicts of livestock grazing with recreational users have been minimized (PR#82 p.63).

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 I: The appellant contends the decision is not based upon the best available science, in violation of NEPA. The FEIS failed to consider the Rio Cebolla Stream Inventory Report (January 2003) and citations provided by appellant on effects of grazing on riparian areas. The Rio Cebolla Stream Inventory Report shows several reaches as not properly functioning (Appeal pp. 8-9).

Response: The NEPA implementing regulations (40 CFR 1500) address the use of science primarily in the context of estimating the effects (environmental consequences) of proposed actions and alternatives (Sections 1501.2(a), (b), and 1502.6).

Appellants provided a list of papers by author and year pertaining to effects of grazing on riparian ecosystems in their DEIS comments along with a general statement that they believe the FS is failing to use the best available science because of adverse effects from grazing (PR#58 p.2). The FEIS responded to this comment (PR#82 Appendix 3 pp.86-87) and specifically addressed papers by Belsky 1999 and Osborn 1987.

The FEIS cites a variety of sources to address stream issues, including the EPA's Total Maximum Daily Load (TMDL) for the Jemez and Guadalupe Rivers (PR# 8), the 2002 New Mexico Surface Water Assessment (PR# 19), the 2002 TMDL Report for the Jemez River Watershed (PR#28), Wildlife Specialist's Report (PR# 35), Soil and Vegetation Specialist's Report (PR # 39), Respect the Rio Annual Report (PR# 41), Rio Guadalupe 5th Code Watershed Hydrologic Condition Assessment (PR #45), Biological Evaluation (PR #46), as well as numerous literature sources dealing specifically with the topic of grazing management in riparian areas (PR# 75, 76, 77, 78, 79).

Other sources used include New Mexico Environment Department (NMED) 2002, NM Department of Game and Fish 2001 files on trout and Santa Fe National Forest current condition stream survey reports from 2001-2003 (PR#44), letter on stream restoration work from New Mexico Trout (PR#52), Clary and Webster 1989 (PR#75), Mosely et al 2002 (PR#76), NM State University Extension publication 2002 (PR#77), and Clary and Leninger 2000 (PR#78).

The document cited by the appellant is for the entire Rio Cebolla. The only portion of the Cebolla affected by this project is the area below Fenton Lake (PR# 82, Appendix B). Within this portion, the river flows through one pasture not routinely grazed and another that is grazed for a short period in the spring and fall (PR# 82, p. 88).

Finding: The analysis used peer-reviewed published papers, local information, and surveys and monitoring of the project area to characterize grazing effects on riparian areas. This is sufficient

under NEPA for the Responsible Official to make an informed decision. Appellant's papers were addressed in the FEIS Appendix.

ISSUE 2: The Decision violates the National Forest Management Act and Santa Fe Forest Plan.

Contention A: The appellant contends the decision fails to meet standards and guidelines under the Santa Fe National Forest Plan for riparian area protection. Grazing in Management Areas A, C, G, N, P, R, S, and X is not compatible with the primary emphasis of protecting wildlife habitat and/or diversity or riparian zones. The appellant asserts 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. Impacts to riparian areas were either not examined or were not examined in sufficient detail (Appeal pp.10, 11, 13).

Response: The FEIS provides a discussion of management direction related to the management areas that overlap the San Diego Allotment (PR #82, p. 5-6). Lands are identified as suitable for domestic livestock grazing in the Santa Fe National Forest Plan, including Management Areas A, C (grazing allowed where consistent with primary emphasis of visual quality and recreation), G, I and R (with protection of cultural values), N (where consistent with protection of essential wildlife habitat), P, S, and X. The direction found in the Santa Fe Forest Plan includes management emphasis, however this does not mean livestock grazing cannot occur if emphasis is for managing wildlife or recreation.

Standards for riparian area protection in the Jemez National Recreation Area are spelled out in the Jemez NRA and plan amendment EA (PR#25). The Jemez NRA EA limits riparian grazing to 3 weeks or less in spring and three weeks or less in fall. Where grazing occurs in river riparian areas it would be for short durations so that only light use occurs or during dormant periods. This type of grazing system can be highly beneficial, especially in the spring allowing plant regrowth to occur before the dormant period. From an ecological perspective there would be minimal short-term localized effects to riparian area vegetation. Overall condition of riparian areas would continue to improve without livestock grazing due to additional controls on recreational uses and managing grazing (PR#25 p.40).

The San Diego FEIS analyzes effects to riparian in the comparison of effects by alternative, which shows that the selected alternative would reduce the amount of damage to fences by recreation users and subsequent unauthorized cattle movements. Following Jemez NRA standards would continue and encourage upward trend in riparian area recovery (PR#82 p.28). The alternative of eliminating grazing in riparian pastures entirely was considered and eliminated. It was dropped because it was originally analyzed in the Jemez NRA EA and decided that riparian areas were being protected as required through NRA mitigation measures and monitoring, which was incorporated into San Diego Allotment EIS (PR#82 pp. 24, 38). All the action alternatives include some facility development that would move cattle out of riparian areas (FEIS PR#82 p.10) and describes riparian pasture grazing system in Alternative 3 (pp.18-19).

Mitigation to minimize impacts from cattle grazing on riparian and upland vegetation includes minimum stubble height on key herbaceous riparian vegetation and limits on percent utilization, browse vegetation percent utilization requirements, streambank instability limits, and conservative grazing intensity utilization for uplands (FEIS PR#82 p.25). Fence construction in Alternatives 3 and 4 would prevent cattle from drifting into riparian areas (FEIS PR#82 p.42).

The Regional Guide for the Southwestern Region (1983) was removed as guidance and either incorporated into Forest Plans or dropped as guidance (see Federal Register Notice, 66 FR 65463, 12/19/2001).

Finding: The FEIS proposed action and the selection of Alternative 3 in the ROD indicates that riparian management is a priority. Continued riparian improvement is ensured under this decision, and there is no violation of the Santa Fe National Forest Plan or the Jemez NRA standards.

Contention B: The design of cattle fencing in the San Diego allotment fails to consider the impacts on hikers and recreational users who will not have easy access to areas. The fencing itself is not visually pleasing and the new water developments will create an unsightly mess across the landscape. The San Diego Allotment encompasses Management Areas C and X, including the Jemez National Recreation Area where the emphasis is recreation (Appeal p.18).

Response: The Record of Decision (PR#83 p. 1) discloses that the selected alternative will reduce or eliminate cattle presence in riparian areas during the periods when dispersed recreation use is high in the summer months. In the San Diego Allotment, cattle are completely excluded from the Jemez River and are administratively restricted from the remaining high use riparian recreation areas between Memorial Day and Labor Day so that the potential for conflicts related to the presence of cattle and fresh manure in these dispersed recreation sites is greatly reduced. During the Jemez NRA public involvement process over a couple hundred comments received and only three comments suggested eliminating cattle use in the Jemez National Recreation Area (FEIS PR#82 p.63). There are no developed trails in the San Diego allotment (p. 32) and walk-through openings are placed at trail paths (FEIS PR#82 p. 10). Range facilities will be built and maintained to minimize disruption to the visual corridor and fences installed to minimize effects to recreation travel (FEIS PR#82 p. 27). Management Areas C and X allow livestock grazing (FEIS PR#82 pp. 5-6).

Finding: Range facilities were designed to minimize impacts on recreation and visuals, and meet the Forest Plan standards.

ISSUE 3: The mitigation measures are insufficient to protect the Mexican spotted owl in violation of the National Forest Management Act and the Endangered Species Act (ESA).

Contention: The mitigation approved for this allotment is in violation of the Forest Plan and standards. Allowable use should not exceed 30 percent in order to meet the needs of Mexican spotted owl and the northern goshawk. The proposed utilization standards are set at a conservative use level of 30-40 percent of current year's growth however the proposed action permits 60 percent utilization during the dormant season and 50 percent in the growing season without evidence that this will protect vegetation or riparian function.

Response: The Record of Decision for Amendment of Forest Plans (1996 Amendment) requires forage use by grazing ungulates to be maintained at or above a condition that assures recovery and continued existence of threatened and endangered species. The 1996 Amendment allows the Forest Service to develop site-specific forage use levels in consultation with the U.S. Fish and Wildlife Service. The Santa Fe National Forest consulted with the Fish and Wildlife Service on utilization levels up to 40 percent and received concurrence from the Service that utilization levels up to 40 percent would not adversely affect the Mexican spotted owl (PR #56 and #64). The northern goshawk, as a Forest Service sensitive species, is not subject to the same requirements as found in the Amendment. The Biological Evaluation (PR #46) determined the utilization levels would not be likely to cause a trend to federal listing or cause a decrease in overall species populations for the northern goshawk (PR #46, p. 4). Therefore the allowable use levels of 40 percent are consistent with the Santa Fe Land Management Plan, as amended.

The project will adopt the riparian standards established in the Jemez National Recreation Area (JNRA) through out the allotment (PR #44, p. 5). The Jemez National Recreation Area EA (PR #25, p. 40) allows short duration riparian grazing in the spring (mid April to late May) and in the fall (mid October to late November) in the Rio Cebolla and Rio Guadalupe pastures of the San Diego allotment. The Jemez National Recreation Area EA (PR #25, p.40) analyzes the effects of riparian grazing at 60 percent dormant season utilization on grasses and 50 percent utilization on shrubs and concludes that the ecological condition of riparian areas would continue to improve under the prescribed standards. The Fisheries Specialist Report (PR #44, p.5) states that riparian conditions should be maintained or will improve. In addition, the Wildlife Effects Report (PR #35) states riparian utilization guidelines should maintain both herbaceous and woody species and allow for their recruitment.

The actual use in riparian areas has been much lower than the maximum levels in this decision. In 2000 and 2001, livestock use in the Cebolla pasture riparian area was 10 percent or less in the growing season and 40 percent in the dormant season (PR #25, p.38), while utilization in the Lake Fork pasture from 1999 to 2001 was 10 percent or less (PR #25, p.39). The decision does not change riparian management from the previous decision, so effects from livestock on riparian areas are not expected to increase with this decision.

While the analyses support the utilization levels in the proposed action, the Section 7 consultation for the Mexican spotted owl failed to address 60 percent dormant season utilization in riparian areas, which are restricted habitat for the Mexican spotted owl. The Biological Assessment (PR #56 pp. 2, 12) states that forage utilization will be maintained at 30 to 40 percent. The U.S. Fish and Wildlife Service concurrence with the determination of “May Affect, Not Likely to Adversely Affect” was based on 30 to 40 percent utilization (PR #64).

Finding: The 60 percent herbaceous and 50 percent woody browse utilization levels in riparian areas would allow for improved riparian condition and are consistent with the Santa Fe NF Land Management Plan, as amended. However, the Forest failed to consult on the allowable use of 60 percent in riparian areas, which are Restricted habitat for the Mexican spotted owl. The Forest must comply with the use level (up to 40 percent) for which they obtained concurrence or re-initiate consultation on these standards.

ISSUE 4: The Decision violates the Clean Water Act.

Contention: The appellant contends the FEIS fails to adequately state the causes of the cold-water fishery degradation, therefore violating the Clean Water Act. The designated use as a high quality cold-water fishery is only partially supporting on the Rio Guadalupe and not supported on the Rio Cebolla. The EIS misleads by stating on page 40 that cumulative effects continue positive trends in maintaining the high quality cold-water fishery.

Response: The FEIS discloses the results of the 2002 New Mexico Environment Department (NMED) Surface Water Quality Assessment (PR# 82, p.41) which listed the Rio Guadalupe as partially supporting its designated use as a high quality cold-water fishery and the Rio Cebolla as not supporting its designated use as a high quality cold-water fishery. Both streams fully support their six other designated uses (irrigation, livestock water, domestic water, secondary contact, fish culture and wildlife habitat). The NMED report lists probable sources of impairment as removal of riparian vegetation, recreation and tourism activities, range grazing – riparian and/or upland, natural sources, habitat modification, bank or shoreline modification/destabilization, grazing related sources and agriculture (PR# 82, p.41, PR #19).

The basis for the statement in the cumulative effects section regarding the expectation of continued positive trends is based appropriately on current and future activities in the area, including road decommissioning, as well as grazing, travel and dispersed recreation management (PR #82, p. 40). These activities address many of the probable sources of impairment, leading to the positive prognosis that conditions will improve.

The appropriate non-point source pollution considerations, which include Best Management Practices (BMPs), were made during the planning process (PR# 83, p.11, PR# 82, p24-27) and the New Mexico Environment Department (PR# 57) was consulted during the project scoping and planning phases.

Finding: Appropriate procedures were followed and adequate mitigation is planned for this project. There will be no violation of the Clean Water Act

ISSUE 5: The Decision fails to protect known heritage and archeological sites in violation of the Santa Fe Forest Plan and National Historic Preservation Act.

Contention: The action alternative within Management Areas R, I, P, S and X fails to prioritize protection of all known heritage and archaeological sites. Mitigation is limited to monitoring and use of brush piles, which is not protection. Grazing is not compatible with the primary emphasis of the area, and should not be permitted. Only 38 percent of the allotment has been surveyed for sites.

Response: Protection of archaeological sites was identified as a significant issue in the NEPA analysis (PR #7, 13, 15, 31) and in the FEIS (PR # 82, pp. 8-9). The impacts of grazing and range improvements on archaeological sites were considered and analyzed in detail, including a site-specific field assessment of grazing impacts (PR # 34). Findings revealed little or no impact from grazing at the majority of archaeological sites (PR #34, pp. 66-67). Twenty-eight percent of the sites demonstrated some impact, including presence of hoof prints, manure, or cattle trails.

Less than one percent of the 218 sites inspected revealed artifact damage, and no sites revealed structural damage. Impacts to two sites were associated with the presence of nearby water troughs. Mitigation measures were developed to monitor site condition and to protect sites from direct and indirect impacts (PR #82, pp. 26-27 and Appendix A pp. 77-82). Mitigation measures include site-specific monitoring including all National Register sites; developing a monitoring program specific to Holiday Pasture; removal of two water troughs located in proximity to sites; stabilizing areas within sites impacted by cattle trails; and placing slash to reroute cattle away from site boundaries. Additional protection measures include locating new range structures to avoid congregation of cattle on identified sites; no salting within or adjacent to sites; periodically inspecting existing facilities (water tanks, fences, corrals, etc.) to ensure that site impacts are not occurring; and monitoring the pipeline installation and removal of water troughs.

Based on the findings of the field assessment and the proposed mitigation measures, the Forest determined that Alternative 3 would have no adverse effect on archaeological sites, provided the mitigation measures and monitoring were implemented (PR #65). The State Historic Preservation Officer concurred with this finding (signed concurrence form not in Project Record). The National Historic Preservation Act's implementing regulations, 36 CFR 800.4(a), do not require a 100 percent survey for federal undertakings, but rather a reasonable level of identification, considering past surveys, the nature of the undertaking, the nature and extent of potential effects, and other factors. SHPO concurrence confirms that the level of survey within the allotment was adequate for the assessment of effects on historic properties.

The Forest Plan allows for cattle grazing in all management areas within the allotment (PR #82 p. 6, and PR#1 pp. 98-173). Management Area I, which is the management area that emphasizes active management, protection, and enhancement of cultural resources, makes up approximately 12 percent of the allotment. Management Area I does not exclude grazing, but stipulates that range structures are to be located to avoid the concentration of livestock on identified cultural resources (PR #1, p. 137). The monitoring and mitigation measures included in the FEIS and ROD (PR #82, pp. 26-27, 77-82, and #83, pp. 5-6) provide for the protection of cultural resources consistent with Forest Plan direction for all management areas within the allotment, including Management Area I.

Finding: The Decision provides for the protection of heritage and archaeological sites consistent with the Santa Fe Forest Plan and the National Historic Preservation Act. The concurrence of the SHPO confirms that cultural resources were given adequate consideration and that Alternative 3 will have no adverse effect on historic properties.

ISSUE 6: The Decision 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. Based on data in the EIS, there is little known about the effects this alternative would have on the ecosystem.

Response: The FEIS/ROD and documents in the record disclose the analysis done to evaluate resource conditions on the allotment and the effects of alternatives considered.

Finding: In the ROD for the San Diego Allotment, 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.



File Code: 1570-1/2200

Date: August 2, 2005 August 1,
2005

Route To:

Subject: ARO, Appeal #05-03-10-0009-A215, San Diego Allotment Appeal, Jemez Ranger District, Santa Fe National Forest, Center for Biological Diversity

To: Cliff Dils, Deputy Forest Supervisor, Appeal Deciding Officer

This is my recommendation on the disposition of the appeal filed in protest of the Record of Decision concerning the San Diego Range Allotment, Jemez Ranger District, Santa Fe National Forest. This Range Allotment provides for grazing of 252 cow/calf units during summer/fall, grazing of 117 cows during winter/spring, and 12 bulls authorized to graze year round on 74,114 acres of National Forest System lands. Range facilities such as fences, pipelines, corrals, and water developments will be constructed.

Acting Jemez District Ranger, Gary Ziehe, signed the decision on April 12, 2005. The District Ranger is herein termed as the Responsible Official. On July 1, 2005, the Center for Biological Diversity filed an appeal on 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 informal resolution was not reached.

Review and Findings

My review was conducted in accordance with 36 CFR 215.19 to ensure the analysis and decision are in compliance with applicable laws, regulations, policies, and orders. The appeal records, including the appellant's issues and requests for relief have been thoroughly reviewed. Having reviewed the Final Environmental Impact Statement (FEIS), Record of 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 FEIS 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 except for Endangered Species Act consultation on dormant season utilization standards. The



consultation completed with U.S. Fish and Wildlife Service was based on 30 to 40 percent utilization in riparian areas, not 60 percent as documented in the decision.

- 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.

Recommendation

After reviewing the record and the issues raised by the appellant, I recommend affirming the Responsible Official's decision for the San Diego Allotment with the following instruction:

Limit utilization of herbaceous vegetation in riparian areas up to 40 percent during the dormant season.

/s/ Jamie Kingsbury
JAMIE KINGSBURY
Guadalupe District Ranger

cc: Constance J Smith

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