



United States
Department of
Agriculture

Forest
Service

Prescott National Forest

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File Code: 1570-1/2200

Date: September 1, 2004

Ms. Silkie Perkins
P.O. Box 365
Clarkdale, AZ 86324

**CERTIFIED MAIL – RETURN
RECEIPT REQUESTED**

RE: Appeal #04-03-09-00-0021-A251, Antelope Hills Allotment Decision, Chino Ranger District, Prescott National Forest

Dear Ms. Perkins:

This is my review decision concerning the appeal you filed regarding the Decision Notice and Finding of No Significant Impact which authorize grazing and implement the grazing management strategy on the Antelope Hills Allotment.

A. BACKGROUND

District Ranger Jackson issued a decision on February 2, 2004 for the Antelope Hills Allotment and selected Alternative 5, Modified Proposed Action, which authorizes 936-1200 animal unit months (cow/calf) to graze a variable season between 1/1 and 12/31 annually on this allotment.

The District Ranger is identified as the Responsible Official, whose decisions are subject to administrative review under 36 CFR 251 appeal regulations. Subsequent to the decision, the following actions occurred:

- You filed an appeal under 36 CFR 251 on March 22, 2004.
- The District Ranger filed a Responsive Statement to your appeal on April 21, 2004.
- You filed a response to the Ranger's Responsive Statement on May 12, 2004.
- You made an oral presentation regarding your appeal points on July 16, 2004 and provided a written summary of your presentation at that time.
- You filed supplemental information regarding your oral presentation on July 30, 2004 (via your lawyer).
- You filed additional supplemental information on July 31, 2004 via email.
- As per our agreement on July 16, I closed the appeal record on August 2, 2004 and notified you of that fact in a letter dated August 10, 2004.



Concurrently, on May 12, 2004 you filed an appeal under 36 CFR 251 of your Annual Operating Instructions (AOI) dated April 13, 2004. As mentioned in my August 10 letter, the issues you raised in the AOI appeal are the same issues you raised in your appeal of Ranger Jackson's February decision on the allotment management plan (AMP), and I have considered the AOI issues concurrently with the AMP appeal. Therefore, this decision applies to both your March 22 appeal of the AMP decision and your May 12 appeal of the AOI, as per 36 CFR 251.95(b).

My review of this appeal has been conducted in accordance with 36 CFR 251 Subpart C. I have reviewed the appeal record, and my review decision incorporates this record.

Since each document you submitted contains slightly different contentions (although there are recurring themes), I will respond first to the points raised in your March 22 appeal letter, and issue a finding on each point. I will then discuss comments from your oral presentation documentation and supplemental comments.

B. APPEAL POINTS AND FINDINGS

In general, you contend that the Ranger Jackson's decision (a) violates law, regulation or policy (b) violates case law, and (c) violates the permittee's civil rights. The specific points you raised include the following:

1. Issue: Grazing the River Pasture

Contention: You believe that the grazing restrictions within the Verde River corridor should be lifted. You assert that Ranger Jackson failed to properly analyze use on the river and request a Biological Opinion from the USFWS. You assert violation of the Endangered Species Act, and that the Forest did not do an adequate analysis of the effects of livestock grazing in the Verde River riparian corridor and floodplain.

Response: In 1994, the Verde River (from the private land at Perkinsville to Horseshoe Lake) was designated critical habitat for the razorback sucker. Consultation with U.S. Fish and Wildlife Service is documented in PR #492 and PR #554, which respectively address critical habitat for spinedace and loach minnow and grazing effects on spinedace, loach minnow, razorback sucker, Colorado pikeminnow, bald eagle, southwestern willow flycatcher and Mexican spotted owl. Ranger Jackson considered this consultation in her decision, which is in compliance with the ESA.

The Prescott National Forest is not opposed to authorizing grazing in the floodplain and riparian zone of the Verde River. We are cognizant of the issues regarding the effects of grazing on native/non-native fish and have been participating in fish population and habitat surveys, removal of non-native fish from the river, and supporting research by the Rocky Mountain Forest and Rangeland Research Station, Flagstaff, the University of Arizona, and the Arizona Game and Fish Department (AGFD). The information postulating a negative impact on native fish by removing livestock grazing is anecdotal. While post-1993 flood data shows non-native fish populations to have increased more than natives there has been no determination as to whether this is a result of habitat changes or of non-native fish being more competitive. It is important to remember that this same habitat supported native fish prior to the introduction of non-natives.

Finding: The District Ranger is affirmed on this issue.

2. Issue: Water Rights

Contention: You assert that the water on the allotment cannot be given to Arizona Game and Fish (for use of wildlife) because you have title to all the water on the allotment.

Response: Prescott National Forest has also filed for water rights on many of the named waters with a request for reservation of use for livestock and wildlife. Adjudication of waters in the State of Arizona is underway and until such time as that process is completed in the Verde River watershed, the ownership of water rights is unsubstantiated. Some access is presently available (Cress Spring), but other access is restricted by fencing needed to exclude grazing from the Verde River.

The request (in your supplemental statements) that “the Forest Service should work cooperatively with the Permittee to explore creative management schemes designed to preserve the resources in the Verde River pasture while allowing use for grazing and access to water” is reasonable and should be ongoing using the direction for adaptive management. The interpretation of that request is to direct access to waters within the floodplain (like Cress Spring). Furthermore, the Decision Notice does not require a reserve pool of water be left in stock tanks for the use of wildlife.

Finding: The District Ranger is affirmed on this issue.

3. Issue: Deferral during the growing season

Contention: It is your assertion that the decision’s use of variable numbers and variable season that involves complete herd removal for a period of time cannot be implemented because you do not have anywhere to take the herd, did not anticipate complete herd removal, and are concerned this will cause instability in allotment value.

Response: The intent of a variable season of use for less than 52 weeks is to ensure grazing deferral during critical periods of forage plant growth. As additional waters are developed, the ability to graze the Forest consistent with the effects described in the EA will increase. This provision can be revisited when there is sufficient water to implement the rotation to achieve the needed deferral and support livestock for the entire year.

The Decision Notice does not specify a specific off-forest period, so the period off forest would be based upon forage conditions and management capability that affect the implementation of this direction. By not carrying forward a period of off-forest time (nine weeks), Ranger Jackson recognized that in favorable conditions (when forage plants are healthy and water is available) there is less need for removal of livestock.

Ranger Jackson clarified how variable season would be implemented and the reason for an off-forest period. I reviewed the Ranger’s response and EA, Project Record, and handbook

references and reviewed permittee-provided information that relates to this item (PR #362, 366, 448, and 521). Ranger Jackson considered management capability and the physiological needs of forage plants and determined that an off-forest period would be responsive to these factors.

Finding: The District Ranger is affirmed.

4. Issue: Range of Numbers

Contention: You assert that the range of numbers is merely an incentive to create water improvements and restrict grazing as much as possible.

Response: Ranger Jackson's decision is not for fewer numbers, as the low number is the current permit and the upper number is for 22 more livestock than the current permit. A range of numbers is an effective means of displaying the fluctuation in carrying capacity of the allotment under average conditions (excluding extremes of sustained high precipitation or of drought).

Ranger Jackson described that water development was intended to improve supplies so as to provide flexibility in rotation of grazing. She looked at water development as a way to work with you to accomplish sound resource management. Alternative 5 displays an increased capacity on Antelope Hills based on additional water being available, but does not try to project the ultimate stocking. Stocking is an administrative decision and is used in environmental analysis as an estimation of the numbers that would achieve the effects described by alternative. As the alternative's management practices are applied, the effects of stocking are assessed and adjustments made (stock and monitor). This process is described beginning on page 2-10 of the EA.

The Forest Service issues grazing permits consistent with resource direction from the land management plan [Forest and Rangeland Renewable Resources Planning Act of 1974, Sec. 6(h)(3)(i)]. The Prescott National Forest (PNF) Land Management Plan (LMP), p.42 states *"Increased stocking will be permitted only as demonstrated capacity is created and management capability is proven. Any increased number must allow for protecting or enhancing long term productivity of the land under the multiple use concept."* Existing resource conditions and current management capability on Antelope Hills make the selected range of numbers reasonable.

A grazing permit is issued for stocking appropriate to current management and can include some projected increase based on planned range improvements. Existing management capability for the Antelope Hills allotment is to support 78 cattle; the effects of this strategy are described in Alternative 2, Current Management. This alternative reflects a lack of reliable water (PR #549, App. A); however, with the installation of each additional water proposed in Alternatives 4 and 5 comes a projected improvement in distribution. With increased distribution comes increased stocking. The Permittee-submitted Alternative 4 assumes an increase of 57 cattle in the base stocking (135 cattle) capacity. That number is not within the current management capability of the land (insufficient water) and therefore is not consistent with the Forest's Land Management Plan.

Finding: The District Ranger is affirmed on this issue.

5. Issue: Permittee Consultation and Comments

Contention: It is your belief that you were not consulted prior to or during the initiation of this project, and that your comments were ignored throughout the process.

Response: PR#443 indicates that once the Permittee Alternative (#4) was submitted, analysis was conducted and you were advised regarding issues with grazing the river corridor, and that much of Alternative 4 would be incorporated into Alternative 5. In response, you submitted updated material (PR# 448, 455). You also had the opportunity to respond with comments to the analysis completed in year 2000 (PR#519).

While the analysis was interrupted prior to making any decision due to designation of critical habitat for spikedace, you participated in inspections and data collection (PR#519). Once the project was restarted, you were advised that the process would involve a revamping of the documents but not involve any new proposals (PR#503) and continued to be involved with inspections (PR#519). You were advised of the proposed outcome of the analysis (PR#519), again had an opportunity to comment on the project (PR#509), and did so (PR#521).

The above actions meet the intent of the laws and regulations requiring permittee involvement in project development.

Finding: The District Ranger is affirmed in this issue.

6. Issue: Sound Science

Contention: You assert that sound science was not used when originally writing the plan, and that methods used to create the initial plan should have been replaced with more acceptable methodology. You clarified this to refer to a lack of current production-utilization studies or full allotment inspections.

Response: The focus of the environmental analysis is to determine the effects of existing uses and project the future effects of livestock grazing based on an adequate range of alternatives. Existing effects were determined from inspections and other data cited in the EA. Projected effects, by alternative, were derived from the variability found in field data, including inspections, and from the PNF ecological database which is used as the basis to describe an attainable desired condition. You were very helpful in this exercise by directing, or accompanying, PNF personnel on inspections (PR #519). Areas grazed by livestock were surveyed, as well as areas of potential grazing capability. In addition, plot data collected for the Ecological Inventory (20 plots) and the Terrestrial Ecosystem Survey (2 plots) provided an adequate sampling of existing vegetative and soil conditions; this is reflected in the favorable condition ratings assigned to Antelope Hills.

Data collected to assess allotment existing conditions and to support stocking predictions uses the most current methodologies and evaluated areas currently grazed and areas of potential grazing, including the areas you identified.

Finding: The District Ranger is affirmed on this issue.

C. Supplemental Comments

The following is a discussion of your supplemental comments and oral presentation (those not already addressed above). Note that these are not appeal points on which I based my decision. I am providing further discussion of these points below to clarify our analysis process.

The EA Violates Core NEPA Principles

You have numerous issues with the NEPA process and believe that the action significantly affected the quality of the human environment and should have required an Environmental Impact Statement. Your concern regarding NEPA stems from a difference of opinion as to what level of information is needed to make an informed decision. You contend that the long-term nature of the planning period (10-years +), the large size of analysis area, and the inherent “controversial nature” of livestock grazing dictate that an EIS should be prepared. You also contend that the alternatives were not, fully and equally, evaluated nor were all mitigation strategies explored.

While each individual allotment may have some site specific differences, all the allotments making up the project have common boundaries and common characteristics that react similarly to livestock grazing management actions (EA pg 1-1). Therefore management can be evaluated as a group as expected effects will be similar. Adaptive adjustments authorized by the permit and implemented through the annual operating instructions allow the operations to be tailored to the more specific conditions on each allotment. Therefore, project size or the long-term nature of the planning period size was not enough to cause the Forest Service to prepare an EIS. Under the NEPA, the decision maker has discretion to use an EA to determine the need for an EIS. This was done and the Finding of No Significant Impact (FONSI) was prepared and issued along with the Decision (DN pg 6).

There are various public opinions on the merits of grazing on public lands. However, these various opinions do not make this project highly controversial in the context of the CEQ regulations.

Alternative Evaluation

You do not feel that the alternatives were fairly and fully evaluated (especially in regards to the Permittee alternative). The decision maker has discretion to decide the range of alternatives that will be evaluated and then decides, based on the evaluation of those alternatives, which alternative to implement (Decision Notice). The ID Team evaluated the alternatives as fully as

available information allowed. The Decision Maker made a reasoned decision among alternatives based on the analysis and displayed the reasons for the decision made (DN pgs 2- 3).

Mitigation Measures

You feel that, had mitigation measures specific to the Antelope Hills Allotment been developed, Alternative 4 (grazing in the river corridor) would/could have been selected for that allotment. The PNF discussed the findings of monitoring of mitigation practices applied elsewhere on the Verde River. Mitigation needs considered included winter season of use, dry year/wet year differences in utilization of riparian herbaceous vegetation, and species disparity between grazed/ungrazed areas of the riparian zone following scouring floods (EA pg 3-31, 32). Utilization standards are given for riparian woody species (20%) and herbaceous vegetation (40%). The Permittee alternative (PR #448) recognizes the need for cool season grazing to reduce annuals early in the year and to utilize mesquite beans and Bermuda grass in the fall. Mitigation not identified was the impact on soil resource adjacent to the stream and mitigation of impacts to fish due to the lack of knowledge on livestock grazing/native fish relationships (EA pg 3-92, citing Rinne, 1999).

The EA used the best currently available information and noted the lack of knowledge about the relationship of native fish and livestock grazing.

The Economic Impacts To The Permittee Were Not Properly Considered In The EA

You contend that the significant issue regarding economic impact on the permittee was not adequately addressed. The significant issue was: *“The proposed reduction in cattle production on the Prescott N.F. allotments of this project could result in financial failure of the affected permit holders and the resultant loss of property and a chosen way of life, as well as a loss of revenue for both Yavapai County government and businesses.”*

Ranger Jackson was guided by the following policy statements in determining what level of economic analysis to consider:

- FSH 1909.15, Section 15: “Express the effects in terms of changes that would occur in the...economic (money passing through society)...components of the human environment.”
- FSM 1970.6 – Scope of the Analysis. The responsible official determines the scope, appropriate level, and complexity of economic and social analysis needed.
- FSM 1903 – POLICY.
 2. Conduct appropriate level of analysis commensurate with complexity of issues, scope of decision, and significance of expected results to arrive at decisions.

The economic analysis for the Chino Grazing Project included consideration of stocking and management strategies on the permittee’s expected financial return, and the effects on Yavapai County revenues. Based on scoping comments, the significant issue and comments from the 30-

day public review, this is an appropriate level of economic analysis and within the Ranger's discretion.

The economic analysis for this project used a comparison of the breakeven calf price, the market prices that would cover the cost of production per calf. While Alternative 4 had the lowest break-even calf price, the break-even calf price for Alternative 5 is 1% lower than current, even after factoring in the estimated \$61,000 in improvements.

Changing Alternative 4 to 200 head

You proposed 200 head for your initial alternative but reduced that proposal to 135 head as an accommodation to the Forest Service. You wish to change that number back to 200 head. This request is not relevant to this appeal, since the appeal focuses on the decision selecting Alternative 5. Your change would be to an alternative that was not selected.

D. APPEAL DECISION

After a detailed review of the record, I find that the District Ranger's February 2, 2004 decision to select Alternative 5 identified in the Environmental Assessment for the Antelope Hills Allotment was based on a reasonable assessment and is in conformance with applicable laws, regulations, policies and procedures. Therefore, I affirm the District Ranger's decision.

Instructions

PNF has been talking to the U.S. Fish and Wildlife Service and AGFD about the potential role of grazing in affecting aquatic habitat and river morphology to the benefit of native fish. It appears that those agencies may support experimental grazing in the Verde River floodplain and riparian zone and that the PNF will be able to authorize that activity. This was not the situation during the preparation of the EA, nor at the date that the Decision Notice was signed and is not yet assured. The forum for the dialogue on experimental grazing of the river has been the Upper Verde River Adaptive Management Project (UVRAMP). PNF used the information available at the time of the environmental analysis, recognizes the need for additional information, and is working toward an agreement that will provide information that addresses the role of livestock grazing in the river ecosystem.

By way of this decision, I am instructing the Chino Valley District Ranger to continue research with appropriate agencies to clarify the role of grazing in managing native fish populations along the Verde River and develop appropriate management strategies.

E. APPEAL RIGHTS

According to the appeal regulations at 36 CFR 251.87, you may file an appeal to the Regional Forester for a second-level review within 15 days of the date of this decision. This second-level appeal must be sent to:

Regional Forester, Southwestern Region
333 Broadway SE
Albuquerque, New Mexico 87102

A copy of the second-level appeal should also be sent to my office.

Sincerely,

/s/ Michael R. King
MICHAEL R. KING
Appeal Deciding Officer
Forest Supervisor

cc: Linda L Jackson