



United States
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Agriculture

Forest
Service

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File Code: 1570-1/2200

Date: May 4, 2004

Bill Stern
Forest Guardians
312 Montezuma Avenue
Suite A
Santa Fe, NM 87501

**CERTIFIED MAIL – RETURN
RECEIPT REQUESTED**

RE: Appeals #04-03-09-0011 through 0015-A215, Antelope Hills, Sand Flat, Perkinsville, Muldoon, and China Dam Allotment Decisions, Chino Ranger District, Prescott National Forest

Dear Mr. Stern:

This is my review decision concerning the appeals you filed regarding the Decision Notices and Findings of No Significant Impact, which authorize grazing and implement the grazing management strategy on the above-named allotments.

BACKGROUND

District Ranger Jackson issued 5 decisions on February 2, 2004, for the above-named allotments. The decisions resulted in the selection of the following alternatives and authorization:

- Antelope Hills Allotment, Alternative 5, which authorizes 936-1200 animal unit months (cow/calf) to graze a variable season between 1/1 and 12/31 annually.
- Sand Flat Allotment, Alternative 5, which authorizes a range of 280–300 head of cattle (cow/calf) to graze from approximately 12/18 to 5/15 annually.
- Perkinsville Allotment, Alternative 5, which authorizes a maximum of 3,192 animal unit months (cow/calf) to graze October 15–June 15 annually.
- Muldoon Allotment, Alternative 5, which authorizes 131-170 head of cattle (cow/calf) to graze a variable season between 1/1 and 12/31 annually.
- China Dam Allotment, Alternative 5, which authorizes 160 head of cattle (cow/calf) to graze 11/1–5/31 annually.

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 your appeal. The record indicates that informal resolution was not reached.

My review of these appeals has been conducted in accordance with 36 CFR 215.18. I have reviewed the appeal record and the recommendation of the Appeal Reviewing Officer. My review decision incorporates the appeal record.



APPEAL REVIEWING OFFICER'S RECOMMENDATION

The Appeal Reviewing Officer concluded that: a) 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; d) public participation and response to comments were adequate.

Since one analysis was done for the group of allotments and the appellant's issues are the same for all allotments, the five appeals have been combined for one response.

APPEAL DECISION

After a detailed review of the record and the Appeal Reviewing Officer's recommendation, I affirm the Responsible Official's decisions concerning the five named allotments, which authorize grazing and implementation of management actions.

My decision constitutes the final administrative determination of the Department of Agriculture [36 CFR 215.18 c.].

Sincerely,

/s/ Mike Baca
MIKE BACA
Appeal Deciding Officer
Deputy Forest Supervisor

Enclosure

cc: David M Stewart, Berwyn Brown, Constance J Smith, Joy Kimmel, Linda L Jackson

REVIEW AND FINDINGS

of

Forest Guardians'

Appeals #04-03-09-0011 through 0015-A215

Antelope Hills, Sand Flat, Perkinsville, Muldoon, and China Dam Allotments

ISSUE 1: Range of Alternatives.

Contention: The appellant contends that a range of reasonable alternatives, as required by NEPA implementing regulations, was not analyzed. The appellant argues the alternatives were centered around the economic viability of the permittee, rather than on protecting the environment.

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).

The record shows several letters on economics of ranching during the scoping and comment period. The summation of public input (PR#508 and EA PR#557 pages 1-7 and 8) describes the issues. The only significant issue identified during scoping was the effect on economic viability of the ranching operation which led to a new alternative developed by the permittee. University of Arizona Cooperative Extension and others requested an analysis of methods used to determine grazing capacity. This request was followed up, team recommendations were given, and a fifth alternative was developed (reference EA PR#557 page 2-1; and documents in PR #307, 323, 338, and 374).

Five alternatives were evaluated and there was a sixth alternative eliminated from detailed consideration (EA pages 2-1 through 2-7 and 2-11). A variety of livestock numbers was proposed in these alternatives, and there are differing effects on soil, watershed and wildlife (EA summary on pages 2-12 to 2-18).

Finding: Issues with the Proposed Action were reviewed and two new alternatives were developed. The Responsible Official appropriately defined the scope of the analysis and analyzed a range of reasonable alternatives within that scope.

ISSUE 2: The Forest Service violated NEPA because the EA fails to consider and disclose adequately the location and protocol for monitoring key forage utilization areas within the allotments and failed to designate forage specifically for wildlife.

Contention 1: 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. Southwestern Region Rangeland Management Specialists, Ecologists, and other scientists have developed these guidelines over a period of 50 years.

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.

The record demonstrates that forage utilization standards on all allotments will be 40 percent of last season's growth or 40 percent of current season's growth as appropriate. Utilization on leaders of woody plants will be limited to 40 percent. Additionally, on Antelope Hills, on soils of sandstone parent material, allowable forage utilization will not exceed 30 percent. On Perkinsville Allotment allowable forage utilization will not exceed 30 percent on alluvial grasslands not in upward trend and on soils of sandstone parent material. On Muldoon Allotment allowable forage utilization will not exceed 30 percent on alluvial grasslands not on an upward trend.

Finding: Utilization standards for the allotments were developed in accordance with Forest Service Policy. 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. As the selected alternatives are implemented, all monitoring information will be available to the public.

Contention 2: The appellant contends that failure to identify the forage need of ungulate wildlife and incorporate them into the alternatives violates NEPA.

Response: The wildlife report PR#537 discussed effects to mule deer from livestock grazing, and that browse habitat will be improved with alternative watershed improvement projects. Alternatives were evaluated for effects to mule deer and elk habitat utilization levels with the impact of livestock grazing (EA PR#557 page 3-79). Analysis of livestock grazing and range improvements was displayed with cumulative effects on elk and mule deer in Group 5 species accounts (EA page 3-83 and summary table on 3-78).

Finding: The combined wildlife and livestock utilization of forage was evaluated in the EA and was adequately displayed to meet requirements under NEPA.

ISSUE 3: The analysis failed to include information on the potential natural community.

Contention: The appellant contends FSH 2209.11 requires the Forest Service compare the present community to the potential natural community.

Response: The entire contents of FSH 2209.11 were removed from the directive system on April 1, 1998 (Amendment # 2209.11-98-1).

Finding: FSH 2209.11 does not require the Forest Service to compare the present community to the potential natural community.

ISSUE 4: The EA fails to consider the historical connection between soil conditions and extensive over-grazing.

Contention: The appellant contends the EA makes no mention of the existence of or critical role of the cryptogamic soils. The appellant further contends that impaired and unsatisfactory soil conditions exceed the Washington Office (WO) recommended threshold values and that the project's proposed water developments are not analyzed for their effects on soils.

Response: The project record contains several references to the function, effects and recovery mechanisms of biological soil crusts (PR# 545, p4 and PR# 557, p.3-24) relative to the proposed action and existing ecological condition on these allotments.

There are no threshold values for soil condition set at the national level. Improvement of soil condition is one of the primary objectives of these projects (PR# 557, p.1-4). The existing and projected soil condition is fully discussed in PR# 545 and monitoring of soil condition indicators is required (PR# 557, p.2-10). The selected alternative meets the forest-determined goal for satisfactory soil condition (PR# 556) and is consistent with Regional guidance for meeting soil condition objectives.

The impacts of proposed water developments and other grazing management improvements are discussed in the EA (PR# 557, p. 3-34 and 3-39) and required mitigation is contained in PR# 557, Appendix 3.

Finding: The connection between soil condition and past/future grazing is adequately analyzed and considered.

ISSUE 5: The Forest Service violated NEPA by failing to consider and disclose the cumulative impacts of the proposed action.

Contention: 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, "the EA contains virtually no analysis of cumulative effects..."

Response: Activities that could cause cumulative effects are listed in various documents in the record and evaluated. PR #461 review of consultation with Federal Interagency Team lists effects from increase use, pinon-juniper density, sand and gravel operations and other actions. The geographic analysis boundaries for wildlife included areas larger than the allotment boundaries for riparian species, pronghorn and for rare plants (PR#468).

The geographic boundaries for soils and watershed in the Tule/Sand Flat allotments used large watershed boundaries (5th code HUC) and listed nine future projects for effects analysis. The types of projects analyzed included fuels and forest health, prescribed burns, fencing, and ongoing roads analysis.

The EA has several references to cumulative effects. For soil and watershed, pages 3-34 through 3-49 includes effects from actions such as urban development, mining, timber harvest, fire and fuels treatment, recreation and grazing. Vegetation effects (EA page 3-19) include drought effects from the last century and grazing effects since the 1870's, invasive plants, recreation and vegetation projects. Wildlife effects (EA pages 3-81 through 85) cover a landscape scale area of 2 watersheds plus ranges of wide-ranging mammals for effects of actions such as thinning, fire,

grazing by alternative. Cumulative effects to fisheries (EA page 3-97), heritage (EA page 3-98), wilderness (EA page 3-99) and air quality (EA page 3-99) are disclosed.

Finding: The cumulative effects analysis is adequate for an informed decision and for disclosing effects under NEPA.

ISSUE 6: The Forest Service violated NFMA by continuing to allow cattle grazing on the allotments without first evaluating the allotments' suitability for grazing. Therefore, the choice of any alternative is premature.

Contention: The appellant contends that NFMA was violated because the Responsible Official failed to evaluate 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, Sec. [3]19.20". 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 decision 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 Forest Plan, 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 (Prescott Forest Plan EIS Appendix B, Description of Analysis Process).

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 Forest Plan. The 36 CFR 219 regulations are not applicable in this case therefore the decision is not premature.

ISSUE 7: Population survey data of Management Indicator Species is needed to ensure the maintenance of minimum viable populations of wildlife.

Contention: The appellant asserts that since the Forest Service lacks quantitative inventory 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: Data from which MIS trends were determined is found within the Forest-wide MIS analysis (PR #552), which was incorporated by reference into the project-level MIS analysis (PR # 537) as further discussed in the environmental assessment (PR #557). Quantitative data are used when available. In keeping with the recent Corner Mountain decision (Center for Biological Diversity v. US Forest Service, No. CV 01-1106 WJ/RLP ACE), "The Forest has the discretion regarding the identification of the geographic area within which the effects of the environmental impacts are measured." In this context, the MIS analysis and disclosure of effects was thorough.

Finding: The Forest completed an analysis of MIS that was sufficient to ensure that minimum viable populations would be maintained.

ISSUE 8: The decision favors the economic viability of the permittee.

Contention: The appellant contends the failure to identify significant environmental issues biased the NEPA analysis.

Response: For the Tule/Sandflat allotment, a separate financial/social effects report was done (PR#526). For the other allotments, the methodology for the economic issue is displayed in PR#539 which is a cost/benefit analysis of ranch operations. Results of this analysis are in the EA (PR#557 pages 3-1 through 3-5). Refer to other review discussions on soils, wildlife and NEPA for an answer on the environmental issues that were covered in this analysis.

The Decision Notice for each allotment spells out the rationale for the decision (PR#556).

For Antelope Hills allotment the rationale is that the alternative was chosen because it will improve existing satisfactory range status and address concerns on the remaining 15 percent that are in unsatisfactory status.

For Sand Flat allotment the rationale is that the range of livestock numbers will move allotments towards desired conditions. While economic benefits are less than the permittee alternative, the selected alternative better addresses resource concerns.

For Perkinsville allotment, the rationale is that the alternative remedies problems of livestock concentration around watering areas. The alternative was chosen because it would implement changes to improve vegetation and soil resources while being economically feasible.

For Muldoon allotment, the rationale is that the alternative would reduce negative grazing effects on vegetation and soils by reducing grazing intensity and duration.

For China Dam allotment, the rationale is that in the alternative, water developments will improve management of the allotment.

Finding: Factors besides economics were used to select the alternative as displayed in the Decision Notices for allotments. Physical, biological, economic and social components were evaluated for analysis and disclosure as required under FSH 1909.15 Chapter 10 sec. 15 *Estimate Effects of Alternatives*.

ISSUE 9: The Permit issuance must be suspended until the Prescott 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 Sand Flat term grazing permit issuance project can be tiered."

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 Prescott Land and Resource Management Plan 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 10: 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 provides not assurance that degraded soil conditions will be restored and will continue to impair land productivity.

Response: Management of National Forest Lands for the highest net public benefits was analyzed and decided upon in the preparation of the Prescott National Forest Plan. The forest plan provides direction for management emphasis within the project area. Net public benefits were analyzed appropriately during the forest plan’s preparation, and are outside the scope of project-level analysis.

Finding: These decisions will improve land productivity and are therefore, consistent with the Multiple Use and Sustained Yield Act.

ISSUE 11: The EA violates the Administrative Procedures Act.

Contention: The appellant asserts, “There exists as yet no information which would indicate that the proposed alternative will remedy the admitted problems on this allotment”.

Response: The EA and documents in the record disclose the analysis done to evaluate resource conditions on the allotments and the effects of alternatives considered. In the DN/FONSI, the Responsible Official properly assessed the issues, public input, and impacts to resources in her decision rationale.

Finding: The Responsible Official made a reasoned and informed decision based on the analysis, and has not violated the Administrative Procedures Act.