



United States
Department of
Agriculture

Forest
Service

Tonto National Forest

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File Code: 1570-1/2200

Date: June 10, 2009

Erik Ryberg
Western Watersheds Project
312 S. Convent Ave.
Tucson, AZ 85701

CERTIFIED MAIL—RETURN RECEIPT REQUESTED

RE: Appeal #09-03-12-0008-A215, Campaign/Bar V Bar Allotments Project, Tonto Basin
Ranger District, Tonto National Forest

Dear Mr. Ryberg:

This is my review decision on the appeal filed electronically on April 27, 2009 by Western Watersheds Project regarding the *Decision Notice* and *Finding of No Significant Impact* (DN/FONSI) on the *Environmental Assessment* (EA) on the above-referenced project. The selected Modified Proposed Action combines the two allotments into one management unit called Campaign Allotment. The decision provides for yearlong use following a deferred rotation grazing strategy for the pastures. The action will implement an adaptive management strategy. The permit will be issued for up to 575 head of cattle yearlong and up to 365 yearlings from January through May. Initial stocking rates are 220 head of cattle from November through May, 100 head from June through October, and 148 yearlings from January through May.

Background

District Ranger Gary Smith made the decision on March 5, 2009, which was published on March 13, 2009, on the above 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*, attempts were made to set up a meeting for 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 actions to be taken and purpose and need are clearly described; b) the selected alternative should accomplish the purpose and need of the project; c) the decision is consistent with direction in the Forest Plan, agency policy, direction and supporting information; and d) scoping and the public involvement process was appropriate

and there was ample opportunity for public participation. A copy of this recommendation letter is enclosed.

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 Campaign Bar V Bar Allotment Project.

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 national appeals web page at: <http://www.fs.fed.us/appeals>.

Sincerely,

/s/ Gene Blankenbaker
GENE BLANKENBAKER
Appeal Deciding Officer

Enclosures: Findings and ARO letter



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REVIEW AND FINDINGS

of

Western Watersheds Project Appeals #09-03-12-0008-A215

Campaign Bar V Bar Allotments, Tonto NF

For the purposes of this review, contentions have been re-arranged from the original appeal order so that they are addressed in the context of applicable laws, regulation and directives.

ISSUE 1: The Campaign Bar V Bar Allotments project does not meet the requirements of NEPA.

Contention A: The management changes proposed by this decision will not accomplish what the Forest Service maintains. The same number of cows for the same amount of time on a smaller number of acres is the basis of the decision which is not a change. Grazing riparian areas in the winter is not a change from existing management over the past 11 years and continues a decline in riparian areas. The decision will not lead to improvements in riparian conditions. There was no hard look at impacts of this grazing on the riparian, soil and vegetative resources on the allotment (Campaign appeal pp.2-3).

Response: The current term grazing permit (PR Vol. 1 PR #8) allows 575 cows/bulls from January 1 through December 1 (year long) and 365 yearlings from January 1 through May 31. Of the 575 cows/bull, 50 are listed on the permit in non-use status. Currently, a reduced number of cattle have been authorized on the allotment (220 cows/bulls from November through May, 100 cows/bulls from June through October, and 148 yearlings from January through April.

The allotment consists of 15 primary pastures and several smaller bull and holding pastures. Cattle are moved through the primary pastures on the allotment using a deferred rotation grazing system.

The Decision Notice/Finding of No Significant Impact (PR Vol. 4 #16) authorizes a change in livestock management, including fencing along Roosevelt Lake in Badlands and Grapevine Pastures, placing a lock on a corral gate in Tule Canyon, and implementing an adaptive management strategy which allows changes to the specific number of livestock authorized annually, specific dates for grazing, class of animal or modifications in pasture rotations.

An additional change from current management includes addressing concerns for riparian habitat in Tule, Two Bar and Campaign Creeks, by limiting grazing use to winter months (November through March) in the Two Bar, Tule, and Reevis pastures when livestock impacts are less likely

in sensitive riparian areas. Additionally, use of the following pastures will be deferred during years lacking significant production (< 100 lbs. /acre of annual forbs and grasses): Grapevine, Badlands, Schoolhouse, West Ridge, Campaign, Spring Creek, Tidwell, and Jojoba. This will help minimize impacts to jojoba and other key browse species during important spring growing periods and would aid in recovery of impaired soils in these pastures.

Effects to riparian resources are disclosed in the Environmental Assessment (PR Vol. 4 #12, pp. 46-49). It notes that the modified proposed action is intended to minimize the direct effects of cattle grazing in riparian areas in all of the grazed key reaches with the exception of Spring Creek.

Effects to soil resources are disclosed in the Environmental Assessment (PR Vol. 4 #12, pp. 37-40). It discusses the effects of the alternatives on both compacted soils and non-compacted soils, noting that conditions are expected to improve more quickly for the pastures which will be deferred during years lacking significant production of annuals, under the modified proposed action, since they will be rested in some years.

Effects to vegetation resources are disclosed in the Environmental Assessment (PR Vol. 4 #12, pp. 40-46). It states that implementation of adaptive management, conservative upland forage utilization guidelines, and conservative riparian forage utilization guidelines will allow this action to move vegetative conditions on the allotment toward desired conditions as outlined. It also notes that the rate of recovery of vegetation impacted by historical overuse will depend not only on these guidelines and on soil conditions but also on climatic factors.

In addition, effects to riparian, soil, and vegetative resources are disclosed in the Soils Report (PR Vol. 3, #17), the Stream Channel and Riparian Areas Report (PR Vol. 3, #21) and the Rangeland Report (PR Vol. 4, #1).

Findings: The decision notice authorizes an adaptive management strategy, including new fencing and forage production requirements for several pastures, which will move conditions on the allotment towards desired conditions. The environmental assessment summarizes a thorough analysis of effects of each alternative to riparian, soil, and vegetative resources.

Contention B: The monitoring plan following adaptive management does not incorporate guidelines or limitation as to what actions will be taken if monitoring shows violations. It does not state how or when or where range conditions will be monitored which must be in the Decision Notice. The monitoring plan does not describe how monitoring will be funded or how it will function (Campaign appeal p.4-5).

Response: The EA and DN/FONSI specifies what kinds of monitoring would be conducted (PR Vol. 4 #12, pp. 31-32; PR Vol. 4 #16, pp. 5-6). The DN/FONSI notes that effectiveness monitoring includes measurements to track condition and trend of upland and riparian vegetation, soil, and watersheds. Monitoring would be implemented following procedures described in the Interagency Technical Reference of 1996 and the Region 3 Rangeland Analysis and Training Guide (1997) (PR Vol. 1 #1). These data are interpreted to determine whether management is achieving desired resource conditions, whether changes in resource condition are

related to management, and to determine whether modifications in management are necessary. Effectiveness monitoring would occur at least once over the ten-year term of the grazing permit, or more frequently if deemed necessary.

Implementation monitoring would occur at any time during the grazing year and would include such things as inspection reports, forage utilization measurements, livestock counts and facilities inspections. Utilization measurements are made following procedures found in the Interagency Technical Reference and with consideration of Principles of Obtaining and Interpreting Utilization Data on Southwest Rangelands. Riparian monitoring techniques are described in Riparian Area Management Utilization Guidelines (Grove, McBride 2002).

The monitoring techniques as described above would be conducted in key areas, however, these would not be the sole locations for gathering information from the grazing allotment to make decisions about the timing, intensity, duration, or frequency of livestock grazing in a given grazing season. The overall condition of the allotment and such things as distribution patterns or rangeland improvement conditions could be assessed at any given time to help make those decisions.

The EA states the data would be interpreted to determine whether management is achieving desired resource conditions, whether changes in resource conditions are related to management, and to determine whether modifications in management are necessary.

Monitoring is an administrative function which occurs as part of grazing permit administration. Monitoring can occur throughout the grazing year and be conducted by Forest personnel in collaboration with grazing permittees and other Federal and state specialists.

Findings: The modified proposed action is clearly articulated under an adaptive management strategy. The environmental assessment and DN/FONSI describe the monitoring plans, which are sufficient for public review and for the Deciding Officer to make an informed decision under NEPA.

Contention C: The FS refers to a paper that calls for utilization changes to be made rarely or never (*Principles of Obtaining and Interpreting Utilization Data*), but because the FS has not told us where these guidelines would be exceeded to make changes, the guidelines are meaningless (Campaign appeal pp.4-5).

Response: The EA references this paper (in record at PR Vol. 4 #12, p. 31) and states under implementation monitoring that the utilization measurements would occur at any time during the grazing year and include such things as inspection reports, forage utilization measurements, livestock counts and range improvement inspections. Data collected could also include browse utilization measurements, perennial grass stubble height measurements, photo points, or height/weight relationships for certain perennial grass species (PR Vol. 4 #12, p. 31). In addition, consistent patterns of utilization either meeting or not meeting conservative use guidelines of 30-40% on key species in key upland areas or meeting or not meeting Forest guidelines for riparian areas would be used as a basis to modify management practices.

Findings: The EA articulates the application of forage utilization as a management guideline relative to changes in numbers of livestock, season of use, and pasture rotations under an adaptive management strategy.

Contention D: The Allotment Management Plan (AMP) should be released as part of the NEPA document to the public and the decision-maker so that determination can be made about the effects (Campaign appeal pp.5-6).

Response: An Allotment Management Plan for the allotment will be developed consistent with Forest Service manual guidance (Forest Service Handbook 2209.13, 94) and would be included as Part 3 of any new term grazing permit issued (PR Vol. 4 #12, p. 17).

The EA specifies the management goals including the desired resource conditions, range management strategies and improvements, and the monitoring strategies that will be used. The range improvements and changes in management are discussed in the modified proposed action and effects are described in Chapter 3 of the EA.

Findings: Allotment Management Plans and the yearly implementation guidance in the Annual Operating Instructions are administrative actions that implement NEPA decisions and are not subject to NEPA as long as they are in conformance and consistent with the project-level NEPA based decision authorizing domestic livestock grazing. The current EA informs the decision maker about the effects of each alternative.

Contention E: The EA defers surveys for heritage and Threatened and Endangered species to the future which should be done before the FONSI, not after. NEPA requires this site-specific review (Campaign appeal p.6).

Response-heritage: Stipulation IV.A.4 of the Region 3 *First Amended Programmatic Agreement Regarding Historic Property Protection and Responsibilities* provides for the development of “Standard Consultation Protocols” for certain classes of undertakings where effects on historic properties and resulting protection and treatment are similar and repetitive. *Appendix H, Standard Consultation Protocol For Rangeland Management*, addresses the potential effects to heritage resources from the authorization of livestock grazing in allotment NEPA decisions, including management practices and range improvements.

In accordance with the Rangeland Management Protocol, future improvements and ground disturbing activities scheduled beyond the first two years of implementation do not need to be surveyed prior to making a NEPA decision. Rather, those projects scheduled beyond the first two years and not included in the initial Section 106 cultural resource report will be contingent upon the completion of the identification and protection of historic properties and compliance with all applicable provisions of Section 106 of National Historic Preservation Act (NHPA). This strategy is referenced in the archeological affected environment report (PR Vol. 1, #46, pp 2-3), the Final Environmental Assessment (PR Vol. 1, #12, pp. 28-29), and the Decision Notice and Finding of No Significant Impact (PR Vol. 4, #16, pg 5).

In terms of threatened and endangered species surveys, consultation with the US Fish and Wildlife Service (FWS) is required under Section 7(a)(2) of the Endangered Species Act if the project is determined to have an affect on listed species. The Biological Assessment (BA) submitted for consultation should include surveys on the presence of suitable habitat and available species survey information sufficient to determine the effect to listed species. In the case of the Campaign/Bar V Bar grazing allotment, a Biological Assessment was prepared (PR Vol. 4, #6) which determined an effect to two listed species, the roundtail chub and Southwestern willow flycatcher. The BA included survey information for both species. The BA was submitted to the FWS for concurrence with a determination of “May Affect, Not Likely to Adversely Affect.” The FWS issued a letter (PR Vol. 4, #15) concurring with the effect determination for both species. The BA and concurrence letter all clearly considered proposed range improvements as part of the effects to listed species.

Finding: The decision is consistent with NEPA in regards to heritage resource survey requirements. The decision is also consistent with survey requirements for Threatened and Endangered Species.

Contention F: The Forest Plan prohibits actions in the wilderness other than what is needed to protect and maintain the range resource, but the Wilderness is full of old water diverting materials at Tule Springs, such as black pvc pipe which are trashing the springs (Campaign appeal p.6).

Response: The Forest Plan requires that range improvements in Management Area 6B (Superstition Wilderness) are the minimum necessary for protecting and maintaining the range resource (PR Vol. 1 #1 Replacement Page 172 and Appendix D). The lands within the Superstition Wilderness are subject to objectives and guidelines set forth by the Tonto Forest Plan and the Superstition Wilderness Implementation Plan (EA, PR Vol. 4 #12 p.11).

Range improvements were added to the wilderness area as part of the 1992 AMP because there was too much concentration of livestock and the improvements were more effective at managing the resource than the “herding” method that was being used prior to the AMPS being issued (PR Vol. 1 #3). These AMPs were developed concurrently with the Superstition Wilderness Implementation Plan (PR Vol. 1 #13). The map of recent water and pipeline developments in the EA indicated that no improvements have been recently added within the Wilderness (PR Vol. 4 #12 Page 21).

The EA (PR Vol. 4 #12 pp.43 and 60) disclose that the No Grazing Alternative may include the removal of certain livestock improvements in accordance with the Wilderness Implementation Plan (PR Vol. 1 #13 p.28). None of the action alternatives proposed included new construction of improvements in the Superstition Wilderness.

Finding: The current number and distribution of developments within Management Area 6B are reasonable in meeting the Forest Plan standard.

ISSUE 2: The Campaign Bar V Bar Allotments project does not meet the requirements of NFMA and the Tonto Forest Plan.

Contention A: The decision violates the Forest Plan because it does not improve the current impaired or unstable condition of stream channels and riparian areas, soils that are in less than satisfactory condition, and vegetation ground cover that does not meet wildlife needs (Campaign appeal pp 1-2).

Response: The project record contains information that confirms that the proposed action does not violate the Forest Plan. Forest Plan standards and guidelines were identified in the EA (Vol. 4 #12 pp. 13-16). The EA acknowledges the selected alternative will maintain and improve riparian and watershed conditions. It also acknowledges while complying with riparian mitigation measures will be difficult, when successfully implemented; this alternative would meet the Forest Plan standards to protect, manage, and restore riparian areas (EA Vol. 4 #12, pp.47-48).

Finding: The selected decision does not violate the Forest Plan.

Contention B: Forest Plan requirements to maintain a minimum of 30 percent ground cover for watershed protection, to achieve 80 percent of potential shrub and overstory canopy in riparian areas, to maintain 80 percent shade over water surfaces, and 80 percent of natural bank protection are not addressed in the EA (Campaign appeal p.3).

Response: The needs for vegetation coverage for streambank and watershed protection are pointed out in the EA (Vol. 4 #12, pp. 12 and 15). Implementation of the selected alternative would lead towards these coverages being achieved (also see response to Issue I, Contention A). Vegetation coverages for watershed protection are addressed in the EA.

Finding: The selected decision does not violate the Forest Plan.

Contention C: The Forest Plan requires that the key reaches be identified which are not included in the EA (Campaign appeal p.4).

Response and Finding: Key reaches are identified in the Environmental Assessment (PR Vol. 4 #12, pp. 25 and 47).

Contention D: The capability and suitability of the allotment needs to be re-evaluated now and not in the future (Campaign appeal p.3).

Response: National Forest Management Act (NFMA) does not require that a suitability or capability 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 Tonto Forest Plan complies with the requirements for a range suitability analysis (PR Vol. 1 #1, pp. 24, 41-43, 52-202, Tonto National Forest Plan, 1985).

Findings: In relationship to NFMA and the 1982 implementing regulation, there is no requirement to conduct a suitability or capability analysis when conducting a project level

analysis concerning the management and permitting of livestock grazing. All requirements for a range suitability analysis were met upon completion of the forest plan.



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Date: June 7, 2009

Subject: ARO, Appeal # 09-03-12-0008-A215, Campaign/Bar V Bar Allotment, Tonto Basin Ranger District, Tonto National Forest

To: Forest Supervisor

This is my recommendation on the appeal filed April 27, 2009 by Western Watersheds Project regarding the Decision Notice and Finding of No Significant Impact (DN/FONSI) on the Environmental Assessment (EA), on the above-referenced project. The selected Modified Proposed Action combines the two allotments into one management unit called Campaign Allotment. The decision provides for yearlong use following a deferred rotation grazing strategy for the pastures. The action will implement an adaptive management strategy. The permit will be issued for up to 575 head of cattle yearlong and up to 365 yearlings from January through May. Initial stocking rates are 220 head of cattle from November through May, 100 head from June through October, and 148 yearlings from January through May.

District Ranger Gary Smith made the decision on March 5, 2009, which was published on March 13, 2009 for the Tonto National Forest on the above project. The District Ranger is identified as the Responsible Official, whose decision is subject to administrative review under 36 CFR 215 appeal regulations.

Informal Disposition

Pursuant to 36 CFR 215.17, attempts were made to set up a meeting for informal resolution of the appeal. The record indicates that informal resolution was not reached.

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 appellant's 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 Tonto 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 Tonto National Forest Plan. I found no violations of law, regulations, or Forest Service policy.

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/ Sharon Wallace
SHARON WALLACE
Deputy District Ranger
Appeals Reviewing Officer

cc: Constance J Smith