



United States
Department of
Agriculture

Forest
Service

Tonto National Forest
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1905-2005*

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File Code: 1570-1/2200

Date: December 22, 2005

Bill Stern
Forest Guardians
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Santa Fe, NM 87501

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

RE: Appeal #06-03-12-0002-A215, Hicks and Pikes Peak Allotments, Globe Ranger District,
Tonto National Forest

Dear Mr. Stern:

This is my review decision on the appeal filed regarding the Decision Notice (DN), Environmental Assessment (EA), and Finding of No Significant Impact (FONSI) on the above-referenced project, which provides for grazing of 25 to 150 cattle yearlong on the Pikes Peak allotment and grazing of 25 to 200 cattle yearlong on the Hicks allotment on a total of 67,223 acres.

BACKGROUND

District Ranger Lee Thornhill made a decision on September 27, 2005, and published on October 5, 2005, for the Tonto National Forest on the Hicks and Pikes Peak Allotments 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 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 would not accomplish the purpose and need established. The project record did not provide sufficient evidence to support that the decision would meet purpose and need, 3) the decision is not consistent with policy and direction related to addressing



cumulative effects. The cumulative effects analysis is not adequate for an informed decision, and 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. The Appeal Reviewing Officer recommended that the Responsible Official's decisions relating to this appeal be reversed and a new analysis be completed.

APPEAL DECISION

After a detailed review of the record and the Appeal Reviewing Officer's recommendation, I am reversing the Responsible Official's decision on the Hicks and Pikes Peak Allotments Project. New analysis and a new decision are needed to balance livestock AUMs with capacity. New consultation with USFWS is needed. Cumulative effects need to be appropriately analyzed for an informed decision under NEPA. A new decision must fully comply with public comment and appeal provisions of 36 CFR 215.

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 Tonto Forest appeals listing by date (scroll to bottom of page) at http://www.fs.fed.us/r3/appeals/forest_tonto/forest_tonto_index.htm

Sincerely,

/s/ Gene Blankenbaker
GENE BLANKENBAKER
Forest Supervisor
APPEAL DECIDING OFFICER

cc:

David M Stewart
Berwyn Brown
Earl Christian
Mailroom R3 Tonto
Constance J Smith
Pat Morrison
Lee W Thornhill

2 enclosures (Findings and ARO letter)

Summary of Pertinent Review and Findings

of

Forest Guardians Billy Stern's

Appeal #06-03-12-0002-A215

Hicks and Pikes Peak Allotments, Tonto NF

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.

Note this record was organized by Volume then Document number. There are 3 volumes that each have numbers that begin at 1.

ISSUE 1: The Decision violates the NFMA and Tonto Forest Plan

Contention: The proposal does not balance permitted livestock use with capacity and will not bring about the desired conditions on the allotment. At the maximum stocking rate the effects for the selected alternative would be similar to Alternative 2 where vegetation conditions are not likely to improve. Effects are similar for soils. The selected alternative will not bring improvements to grazing areas as required by the Forest Plan (appeal p.2).

Response: The calculations for capacity are outlined in the Biological Assessment (Vol. 3, Doc. 31 pp.4-5); stocking rate determination (Vol.1, Doc. 16), and the 2002 EA Appendix C (Vol. 2 Doc. 37 p. A4). Capacity for the Hicks and Pikes Peak allotments that could be supported was determined to be **1450 AUM's** yearlong including the Ortega and Shute pastures on the Hicks allotment. With the elimination of the Ortega and Shute Springs, pasture capacity in Hicks Allotment would be reduced to approximately 60 head yearlong with rest rotation (Vol. 1, Doc. 16). This change resulted in an actual decrease in capacity by 233.6 AUM's, for a total available capacity of **1,217 AUM's** (685.2 AUM's for Hicks and 399 AUM's for Pikes Peak).

The actual use for both allotments over the last ten years has been 7,917 AUMs and the current operation is 1,000 head yearlong (BA Vol. 3 Doc. 31 p.5).

The selected alternative includes a variable stocking level of 50 to 350 head of adult cattle yearlong or **600-4,200 AUMs** yearlong for both allotments with initial stocking to be the lower stocking level of 50 head (Vol. 3 Docs. 3 and 5). The Shute and Ortega pastures (EA at Vol. 3 Doc. 44 p. 5, and DN Vol. 3 Doc. 45 p.1) were removed from grazing for the 10 year permit.

Finding: The documentation of capacity does not support the upper stocking levels.

ISSUE 2: The decision violates the NFMA requirement to maintain viable numbers of all species.

Contention A: The appellant contends the Forest Service must manage sensitive species to sustain viability and prevent the need for listing. In addition, the Forest Service must manage fish and wildlife habitat to maintain viable populations of native species. The appellant believes the Forest Service has failed dramatically in its efforts to protect riparian obligate species and their riparian habitats as a result of continued livestock grazing (appeal pp.6-7).

Response: The Biological Assessment and Evaluation (Vol. 3 Doc. 25), and Forest and Project MIS Reports (Vol. 3 Docs. 42 and 43) analyzed the effects to Federally listed species, Management Indicator Species, Region 3 Regional Forester Sensitive Species, and migratory birds occurring on the allotment. These are the only species required to be analyzed according to Federal law and policy. The analysis did not determine any threats to species viability.

The proposed action will not affect or will not result in a trend toward federal listing of any Region 3 sensitive species (Vol. 3 Doc. 25).

The selected alternative “may affect, is not likely to adversely affect” the southwestern willow flycatcher and razorback sucker and their critical habitat, and would not jeopardize the experimental, non-essential population of Colorado pikeminnow. The U.S. Fish and Wildlife Service concurred with these determinations on August 24, 2005 (Vol. 3 Doc. 40).

The Decision Notice (Vol. 3 Doc. 45 p.4) states that there will be a “May effect, not likely to adversely affect “ to bald eagle and Arizona hedgehog cactus, however the Biological Opinion from USFWS concurred upon a “no effect” call on these two species (Vol. 3 Doc. 40). It appears that the “may effect” calls for these species were submitted in July 2004 (Vol. 3. Doc. 26) and that there was some confusion at USFWS in December 2004 on what was being submitted (Vol. 3 Doc. 31). The Biological Opinion also describes the permitted numbers of cattle to be a range from 25 to 200 head or combination of adult cattle and yearlings with numbers of 300 to 2400 AUMs in a yearlong deferred rest rotation type season. Clarification is needed on the consultations to the effects calls and the description of the alternative submitted.

In order to protect riparian resources along the Salt River, the Ortega and Shute Springs pastures would be deferred from grazing for ten years. Prior to livestock use in the Horseshoe Bend pasture a fence will be constructed at Sycamore Springs to protect approximately five acres of riparian habitat (Vol. 3 Docs. 25, 42, 44).

Finding: Based on review of the project record, the Forest did not violate the NFMA requirement to maintain viable numbers of all species. Further, the decision includes management and improvements to protect or improve riparian obligate species and riparian habitat.

Contention B: Population survey data of Management Indicator Species are needed to ensure the maintenance of minimum viable populations of wildlife. Adequate population monitoring has not been done for any MIS or other species that may be affected by continued grazing on these allotments (appeal pp 7-8).

Response: Population trends and habitat status for all Tonto National Forest Management Indicator Species (MIS) were evaluated and disclosed in the 2005 Forest MIS Species Assessment (Vol. 3 Doc. 42). The 2005 allotment MIS Report evaluated and disclosed survey data, monitoring data, population trends, and habitat trends for species affected by this decision and incorporated the Tonto National Forest MIS assessment by reference (Vol. 3 Doc. 43).

Finding: Population monitoring data was summarized within planning documents and determined to be suitable for this decision.

ISSUE 2: The project does not meet the requirements of NEPA.

Contention A: The appellant contends that a range of reasonable alternatives, as required by NEPA implementing regulations, was not analyzed. The EA fails to take a hard look at potential effects of the proposed action and the no grazing alternative. By examining only one action alternative and refusing to analyze others that result in lower stocking rates, the FS has violated NEPA requirements to address a range of reasonable alternatives that not only emphasize different factors but also lead to differing results (appeal pp.10-11).

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)).

Development of the proposed action, the no grazing alternative, and other alternatives follows the direction in FSH 2209.13, 92.31. The proposed action in an adaptive management strategy shall set defined limits of what is allowed such as timing, intensity, frequency and duration of livestock grazing that can be checked through monitoring (FSH 2209.13, 92, 23b- Adaptive Management).

Initial scoping was conducted on January 30, 2002, along with public notice in the newspaper of record (Vol. 1 Docs. 45, 46). Comments were analyzed. There was one significant issue of economic effects to permittee and one potential issue of water rights identified from public scoping (Vol. 2 Doc. 21). Eight alternatives were analyzed within the 2002 EA. Four alternatives were eliminated from detailed study. One alternative was developed based on one significant issue of potential economic impacts and several other issues were deemed to be non-significant (Vol. 2 Doc. 37 pp.6-8). On June 23, 2003, the District Ranger concluded the EA failed to include a viable range of alternatives and the original EA was withdrawn (Vol. 3 Doc. 4). A revised EA in 2003 included a fifth alternative with a stocking range from 50-350 head (Vol. 3 Doc. 11). Comments were analyzed and no new significant issues were identified from public scoping (Vol. 3 Docs. 20 and 23). In December 2004 a third proposed action was published for public comment with four alternatives (Vol. 3 Docs. 32 and 33). There was one significant issue carried forward into the last EA which was Social Economic Viability (Vol. 3 Doc. 44 p. 3). On October 5, 2005, the final EA was published and a Decision Notice signed (Vol. 3 Docs. 44, 45, and 46).

Finding: The record demonstrates that the Responsible Official provided **extensive opportunity** for public participation during the analysis process. The Responsible Official appropriately defined the scope of the analysis and analyzed a range of alternatives within that scope.

Contention B: The EA fails to provide sufficient information to the public. Appendix A referred to in page 12 of the EA does not exist. Table 7 referred to on page 13 of the EA also does not exist (appeal p.2).

Response: The Appellant is correct. These documents were not included within the final EA. However, Appendix A was previously provided to the Appellant as Appendix D in one of the earlier EA's (Vol. 2 Doc. 37 p. A-5). Table 7 was previously provided to the Appellant in this same earlier document (Vol. 2 Doc. 37 p. A-3).

Finding: The Appellant was provided the above documents in a previous EA. The absence of these documents in the final EA did not prevent the opportunity for the Appellant to participate during the analysis and decision making process.

Contention C: The EA does not protect wildlife outside of the closed pastures. The potential southwest willow flycatcher habitat in the Horsebend and North Steer Pastures is not addressed in the EA. Wildlife in all habitat guilds would be expected to have a negative and declining impact, there should be a similar conclusion for Alternative 4 for the pastures outside of Shute Springs and Ortega Pastures (appeal p.3).

Response: The Biological Assessment and Evaluation (Vol. 3 Doc. 25), and Forest and Project MIS Reports (Vol. 3 Docs. 42 and 43) analyzed the effects to Federally listed species, Management Indicator Species, Region 3 Regional Forester Sensitive Species, and migratory birds occurring on the allotment. These are the only species required to be analyzed according to Federal law and policy. The analysis did not determine any threats to species viability.

The BAE identified suitable, potential and critical habitat for the southwestern willow flycatcher on the allotments and analyzed the effects of the selected alternative to the species. Horseshoe Bend and North Steer pastures were included in this analysis. The BAE determined that the selected alternative "May Affect, Not Likely to Adversely Affect" the southwestern willow flycatcher and its critical habitat. The U.S. Fish and Wildlife Service concurred with these determinations on August 24, 2005 (Vol. 3 Doc. 40).

Finding: Based on review of the project record it was determined that the selected alternative will maintain viable numbers of all species.

Contention D: The Forest Service violated NEPA by failing to consider and disclose the cumulative impacts of the proposed action. The appellant contends that the cumulative effects of the alternatives were not adequately addressed, considering past, present, and reasonably foreseeable activities, as required by NEPA. Appellant states, "The EA contains virtually no analysis of cumulative effect." The EA does not even attempt to catalog other activities occurring with the allotment's boundaries (appeal pp. 12-13)

Response: Cumulative effects of past actions were discussed in the project record (Vol. 1 Docs. 18, 20, 41 and 42) and in specialist reports addressing affected environment. Cumulative effects

of 5 current and reasonably foreseeable actions were discussed in the BAEs (Vol. 3 Docs. 25 and 31). Cumulative effects of roads and road maintenance was discussed in Soil Scientist report (Vol. 3 Doc. 41).

Pinal Creek Remediation Project is described but not analyzed in Volume 3, Document 29. The first EA provided for public comment (Vol.2, Doc. 37) contains no mention of cumulative effects except inherent effects of past actions as described in affected environment current conditions. The second EA provided for public comment (Vol. 3, Doc. 11) states there “are no known foreseeable projects within the analysis area that would contribute to cumulative effects”. No other specific cumulative effects are discussed.

The final EA describes the Pinal Creek Remediation Project but does not evaluate its effect in relation to the alternatives and states that “Effects from cattle grazing are not expected to affect water quality in Pinal Creek”. Past actions are not evaluated. There is no discussion of roads, road maintenance, livestock grazing on adjacent allotments, or actions on enclosed private lands as described in specialist reports (Vol. 3 Doc. 44 p.21).

Finding: Though the project record includes consideration of past, present, and reasonably foreseeable actions and cumulative effects, the EA failed to evaluate alternatives in relation to cumulative effects. The cumulative effects analysis is not adequate for an informed decision under NEPA.



File Code: 1570-1
Route To: (2200)

Date: December 19, 2005

Subject: Appeal #06-03-12-0002-A215, Hicks and Pikes Peak Allotments, Globe Ranger District, Tonto National Forest

To: Appeal Deciding Officer Gene Blankenbaker

This is my recommendation on the disposition of the appeal filed in protest of the Decision Notice and Finding of No Significant Impact concerning the Hicks and Pikes Peak Allotments, Globe Ranger District, Tonto National Forest.

BACKGROUND

Acting District Ranger Craig Woods signed the decision on September 27, 2005 for District Ranger Lee Thornhill. The District Ranger is herein termed as the Responsible Official. Billy Stern, Forest Guardians, filed an appeal of this decision under the 36 CFR 215 appeal regulations.

Pursuant to 36 CFR 215.17, an attempt was made to seek informal resolution of this 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), DN/FONSI, 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 would not accomplish the purpose and need established. The project record did not provide sufficient evidence to support contention that the decision would meet purpose and need..
- 3) The decision is not consistent with policy and direction related to addressing cumulative effects. The cumulative effects analysis is not adequate for an informed 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.



After considering the claims made by the appellant and reviewing the record, I found that the Responsible Official did not properly evaluate and disclose the environmental effects relating to the effects of alternatives and cumulative effects and the decision did not meet the stated purpose and need for the decision. .

Recommendation

I recommend that the Responsible Official's decisions relating to this appeal be reversed and a new analysis be completed.

/s/ Pat Morrison

PAT MORRISON
District Ranger, Glenwood Ranger District, Gila National Forest
Appeal Reviewing Officer

cc:

Gene Blankenbaker
Constance J Smith

Hard copy of this ARO letter to be attached to appeal decision mailed to appellant.