

DECISION NOTICE
and
FINDING OF NO SIGNIFICANT IMPACT

Penas Negras Cattle Allotment Analysis

USDA Forest Service Region 3
Santa Fe National Forest
Cuba Ranger District
Sandoval and Rio Arriba Counties, New Mexico

INTRODUCTION: The Penas Negras Cattle Allotment was analyzed in the Penas Negras, Ojito Frio, Palomas, and Vacas Range Allotment Analysis EA (Environmental Assessment). The EA describes the probable environmental effects of the proposed action and three alternatives, including a no grazing alternative. It also prescribes specific mitigation and monitoring requirements to mitigate the risk of adverse impacts to natural resources, including guidelines to follow during implementation. The EA is available for public review at the Cuba Ranger District Office in Cuba, New Mexico and on the Forest website at www.fs.fed.us/r3/sfe/.

DECISION AND RATIONALE: I have decided to approve the grazing management strategy developed as Alternative 2 in the EA. Alternative 2 best meets the purpose and need for the proposed action as stated in the EA (Section 1.1). It will prevent excess grazing resulting from cattle drifting onto the allotment from adjacent allotments through construction and reconstruction of segments of boundary fence. By preventing this excess use, soil and vegetation resources will benefit. This alternative will also contribute to the socio-economic needs associated with traditional grazing in northern New Mexico (Forest Plan pp. 17, 82) and agency policy objectives for National Forest range management programs (Forest Service Manual 2202.1). Alternative 2 is briefly described below:

Management - New ten-year term grazing permit(s) will be issued for cows with calves and an allotment management plan will be prepared within 30-days following project implementation. The allotment will be managed under an eight pasture rest rotational grazing system. The normal season of use for this allotment will be June to October (EA, Table 3). Adjustments to this season will occur based on range readiness inspections and forage utilization (residual measurements). Cattle will be moved when utilization of key forage species in key use areas approaches established standards (not to exceed 40% utilization). Section 2.3.1 of the EA outlines various required mitigations.

Improvements – One new corral will be constructed as well as approximately one mile of new boundary fence. An additional mile of existing boundary fence will be reconstructed.

Monitoring –monitoring will include periodic inspections to ensure compliance with permit terms and conditions. Range readiness will be monitored before the grazing season begins and grazing utilization will be measured (at a minimum) at the midpoint of the grazing season. Vegetation condition and trend will be monitored at five-year intervals.

Issues raised during the planning process were addressed through project design criteria, the application of Forest Plan standards and guidelines and project-specific mitigation measures, and the development of alternatives to the proposed action. Although no key issues were identified during the analysis process, the Rito Café and Rito Penas Negras contain Core Conservation Populations of Rio Grande cutthroat trout, a Forest Service sensitive species. The Rito Penas Negras is being considered for reintroduction of the species. Analysis of information from Proper Functioning Condition surveys conducted in 1999 and 2000 supplements the EA (Attachement 1) to provide a more thorough disclosure of the probable environmental effects and to demonstrate that Alternative 2 will benefit aquatic/riparian resources and water quality. The Supplemental Analysis shows that under Alternative 2, on the Rito Penas Negras, cattle access and use will be eliminated/reduced along 1.4 miles of stream that currently (under Alternative 1) is open to grazing and designated as not properly functioning.

Additionally, with this decision, I am expanding the Rio Grande cutthroat trout mitigation measure (EA, Section 2.3.1) that includes Core Conservation Populations along the Rito Café and Rito Penas Negras to avoid or limit grazing along these stream segments from mid-May to July 15th to protect spawning redds and emergent juveniles.

In making my decision, I considered the probable environmental effects of the proposed action and alternatives disclosed in the EA and the effects on the livelihood and well-being of the grazing permittees. Overall, I believe Alternative 2 adequately balances the need to manage National Forest System lands and resources with the permittee's need to maintain an economically viable grazing operation.

PUBLIC INVOLVEMENT AND SCOPING: A scoping letter from the Cuba District Ranger was mailed to over 100 interested or potentially affected individuals, groups, organizations, tribes, state and other federal agencies in March 2000. The letter described the proposed action, purpose and need, and invited public participation. Five responses were received from this initial scoping effort; subsequently, the project was placed on hold for two years due to other District priorities. In late 2002, the original project proposal was reassessed and modified. Due to changes to the project proposal, a new scoping letter was sent to the public in February 2003. Six responses were received during the second scoping period. Throughout the planning process, numerous meetings were held with the allotment permittees and consultation with neighboring interested tribes was conducted. This project was also listed on the Santa Fe National Forest *Schedule of Proposed Projects* beginning in April 2000 to the present June 2003 edition. The *Schedule* is available on the Santa Fe National Forest website. Comments received during both scoping periods were used to help define the

current situation, identify the important issues, develop project objectives and alternatives, and guide the environmental analysis.

On July 10, 2003, the EA was mailed to individuals and organizations, and agencies that had responded to the scoping or who expressed interest in the project and a legal notice inviting public comment was published in the Albuquerque Journal on July 12, 2003. The public comment period ended August 11, 2003. Three letters were received in response to the 30-day public comment period. Additionally, I received and documented oral comments from one individual. I reviewed all responses from the 30-day comment period and identified substantive comments (Project Record 40). Those substantive comments not already addressed in the EA and project record or in this Decision Notice / Finding of No Significant Impact were subsequently addressed by supplementing the effects analysis (Attachment 1) and modifying the mitigation measure for Rio Grande Cutthroat trout to read as:

Cattle grazing within riparian pastures that border stream segments containing Core Conservation Populations and Reserve Conservation Populations of Rio Grande Cutthroat trout will be scheduled to avoid or limit disturbance during spawning season (generally mid-May through July 15th).

ALTERNATIVES CONSIDERED: The alternatives considered in detail appropriately defined the scope of the analysis and represented a range of reasonable alternatives within that scope. They include: Alternative 1 – representing no change from current management; Alternative 2 - the Forest Service proposed action; Alternative 3 - a modified version of the proposed action that adds two water developments and fencing along State Highway 126 specific to the Vacas Allotment; and Alternative 4 – a no grazing alternative.

Alternative 1 was not selected. While this alternative would meet Forest Service Policy (FSM 2202.1) and the Forest Plan objective (pp. 17 and 82 of the SFNF Plan) for contributing to the social and economic needs associated with grazing in northern New Mexico, and it would meet some of the physical and biological resource objectives, other objectives would not be met. This alternative does not include construction or reconstruction of fences; therefore, the need to prevent excess grazing on the Penas Negras allotment from the adjacent San Pedro and Jarosa allotments (EA, Section 1.1) would not be met. Additionally, this alternative does not address the need for more efficient permittee management of cattle by addressing the need to replace a corral that was stolen several years ago.

Alternative 2 was selected. Like the previous alternative, it will meet Forest Service Policy (FSM 2202.1) and the Forest Plan objective (pp. 17 and 82 of the SFNF Plan) for contributing to the social and economic needs associated with grazing in northern New Mexico. This alternative best meets the purpose and need for improving cattle distribution through construction and reconstruction of boundary fences to prevent excess grazing on the Penas Negras Allotment from adjacent allotments. Additionally, this alternative addresses the need for more efficient permittee management of cattle by addressing the need to replace a corral that was stolen several years ago. This alternative will also contribute to improved water quality and stream and riparian

conditions by reducing/eliminating cattle access along 1.4 miles of stream designated as not functioning properly.

Alternative 3 – The Penas Negras Allotment is one of four allotments analyzed under one EA. Alternative 3 was developed to specifically address permittee concerns related to the Vacas Allotment. As such, there is no difference between Alternative 2 and Alternative 3 with respect to the Penas Negras Allotment.

Alternative 4 was not selected. This alternative would not meet Forest Service Policy (FSM 2202.1) and the Forest Plan objective (pp. 17 and 82 of the SFNF Plan) of contributing to the social and economic needs associated with grazing in northern New Mexico.

APPEALS AND IMPLEMENTATION: This decision is subject to appeal pursuant to 36 CFR 215 by individuals or organizations that submitted substantive comments during the comment period (36 CFR 215.6). The appeal must be filed (regular mail, fax, email, hand-delivery, or express delivery) with the Appeal Deciding Officer. Submit appeals to: Appeal Deciding Officer, Gilbert Zepeda, Forest Supervisor, Santa Fe National Forest, P.O. Box 1689, 1474 Rodeo Road, Santa Fe, NM 87504-1689, fax: (505) 438-7834, email: appeals-southwestern-santafe@fs.fed.us (.doc, .rtf or .txt formats only). If hand delivered, the appeal must be received at the above address during business hours (Monday – Friday 8:00 am to 4:30 pm), excluding holidays. The appeal must have an identifiable name attached or verification of identity will be required. A scanned signature may serve as verification on electronic appeals.

Appeals, including attachments, must be in writing, fully consistent with 36 CFR 215.14, and filed (postmarked) within 45 days following the date the legal notice is published in the Albuquerque Journal. This publication date is the exclusive means for calculating the time to file an appeal. Those wishing to appeal this decision should not rely upon dates or timeframes provided by any other source.

The Penas Negras Allotment permittees may appeal the Decision under 36 CFR 215 or 36 CFR 251, but not both. Under 36 CFR 251, a Notice of Appeal must be consistent with 36 CFR 251.90 and filed simultaneously with Forest Supervisor Gilbert Zepeda, Appeal Deciding Officer (above listed address) and Cuba District Ranger, Steve Romero (U.S. Highway 550, P.O. Box 130, Cuba, NM 87013; fax: (505) 289-0232) within 45 days from the date of publication of legal notice in the Albuquerque Journal.

If no appeals are filed within the 45-day time period, implementation of the decision may occur on, but not before, five business days from the close of the appeal filing period. When appeals are filed, implementation may occur on, but not before, the 15th business day following the date of the last appeal disposition.

FINDING OF NO SIGNIFICANT IMPACT: Based on the EA, I have determined that the Penas Negras Cattle Allotment Grazing Management Program is not a major federal action that will significantly affect the quality of the human environment; therefore, an

Environmental Impact Statement will not be prepared. This determination is based on the following:

1. *Beneficial* as well as *adverse impacts* were considered (EA, Section 3). Under Alternative 2, constructing and reconstructing approximately two miles of allotment boundary fence will prevent excess grazing that occurs from adjacent allotments onto the Penas Negras Allotment. This will improve vegetation condition and soil condition by decreasing utilization. This alternative will also benefit water quality and aquatic/riparian habitats on the Rito Café and Rito Penas Negras because cattle access and use will be eliminated/reduced along 1.4 miles of stream. The socio-economic needs associated with traditional grazing in northern New Mexico (Forest Plan pp. 17, 82) and agency policy objectives for national forest range management programs (Forest Service Manual 2202.1) will be maintained under this alternative.
2. Under Alternative 2, there would be little or no adverse impacts to *public health or safety*. No vegetation manipulation is being proposed and as such there would be no associated safety concerns such as those related to smoke from burning or heavy traffic from hauling timber. Cattle would be prohibited along Rock Creek and American Creek between Memorial Day and Labor Day, reducing the potential for encounters between cattle and recreation users.
3. There are no *unique characteristics* associated with the project. Therefore, the project will not adversely impact any historic or cultural resources, wetlands, ecologically critical areas, parklands, or prime farmlands, or other resources considered to have unique characteristics.
4. The effects of managing grazing on the allotment on the quality of human environment are not likely to be *highly controversial*. The effects disclosed in Section 3 of the EA are based on the best available information and the judgment of resource management professionals considered by the courts to be experts in their fields, who have applied their knowledge and expertise to similar projects on National Forest System lands and resources in the past. The predicted environmental consequences are based on known effects of actual management practices in this area, common resource management practices described in agency directives, prescribed in Forest Plans, and used by other land management agencies.
5. The environmental effects are typical for this type of project and do not involve *unique or unknown risks*. As stated previously, the effects described in the EA are based on the best available information and the judgment of resource management professionals. The EA does not indicate there will be any highly uncertain impacts.
6. The decision to reissue the Penas Negras Allotment grazing permit does not establish any *future precedent* for other actions that may have a significant effect. Future actions will be evaluated through the NEPA process and will stand on their own as to environmental effects.

7. *Cumulative effects* for wildlife, watershed, air, and other resources were considered and disclosed in Section 3 of the EA. No other past or future actions in the area will combine with the effects of this project to cause any cumulatively significant impacts. Implementation is expected to have primarily beneficial effects.
8. The grazing management program proposed in Alternative 2 (EA, Section 3.7) will not adversely affect properties listed in or eligible to the National Register of Historic Places, and will not cause the loss or destruction of significant scientific, cultural, or historical resources. Consultation with the State Historic Preservation Officer under Section 106 of the National Historic Preservation Act has been completed and the SHPO concurred with the *no adverse effect* determination.
9. The grazing management program proposed in Alternative 2 will not adversely affect any plants or animal species listed or proposed for listing under the Endangered Species Act known to inhabit or frequent the area with the mitigation measures identified in the EA (Section 2.3). Consultation with the U.S. Fish and Wildlife Service has been completed and they concurred with the resource specialist's determination of *may affect, not likely to adversely affect* for the Mexican spotted owl (Project Record # 41).
10. Alternative 2 is in compliance with all *federal, state and local* laws or requirements imposed for environmental protection. The NMED Surface Water Quality Bureau recently established TMDLs (total maximum daily load) for the Rio Guadalupe and its tributaries. The Supplemental Analysis (Attachment 1) within the allotment indicates this alternative will maintain or improve water quality and aquatic/riparian habitats along several stream courses including the Rito Café and Rito Penas Negras. Hence, this alternative will comply with the Clean Water Act.

FINDINGS REQUIRED BY OTHER LAWS: The Penas Negras Cattle Allotment is located in Forest Plan Management Areas A and N which emphasize a variety of management prescriptions as detailed in the EA (Section 1.3). The Forest Plan analysis process established the suitability of the allotment for grazing (Santa Fe Forest Plan EIS, Appendix B, Description of Analysis Process). Alternative 2 is fully consistent with Forest Plan standards and guidelines for these management areas as well as with forest-wide standards and guidelines established in the Forest Plan. The conservative utilization standards prescribed by Alternative 2, in conjunction with reduced or eliminated access to and use (timing/duration) along streams and within riparian areas meets Forest Plan wildlife and fish, Soil and Water, and riparian goals (Forest Plan, page 19-20).

Implementing Alternative 2 will not threaten any wildlife species or habitats, including those classified as management indicator species in the Forest Plan as well as migratory birds (EA, Section 3.6). A Biological Assessment and Evaluation for threatened, endangered, and sensitive species is included in the Project File.

Alternative 2 will not impair land productivity and is therefore, consistent with the Multiple-Use Sustained-Yield Act of 1960, as amended. Impaired soils on the allotment

are located on steep slopes, areas not or only incidentally grazed by cattle. Actions that improve cattle distribution and grazing use may lead to improved soils.

A heritage resource clearance has been completed, with concurrence from the State Historic Preservation Officer. No group of people, including racial, ethnic, or socio-economic group will bear a disproportionate share of any negative consequences of this action.

INFORMATION CONTACT PERSON: Jim Eaton, Range Staff, or Steve Romero, Cuba Ranger District, PO Box 130, Cuba, NM, 87013; 505-289-3264.

/S/ Steve Romero

STEVE ROMERO
District Ranger
Cuba Ranger District, SFNF

DATE 11/04/03