

**File Code:** 1570**Date:** JUL 13 2016**Route To:****Subject:** Appeal Decision of the Apache-Sitgreaves National Forests Land Management Plan Revision**To:** Calvin Joyner, Regional Forester, R-3

This is my decision on the appeals of the Final Environmental Impact Statement (FEIS) and Record of Decision (ROD) for the Revised Apache-Sitgreaves National Forests Land Management Plan (Forest Plan). All appeals of the Forest Plan have been consolidated into one set of issues and one decision is being rendered. The issues were sufficiently similar to allow consolidation (Optional Appeal Procedures, Section 13 (b)). The appeal reference numbers are abbreviated throughout this decision documented by the last four digits of the tracking number for the notice of appeal (NOA).

Five appeals were submitted under the Optional Appeal Procedures during the appeal filing period. One appeal has been withdrawn. On July 5, 2016, Anthony W. Merrill, Polsinelli, representing the International Society for the Protection of Mustangs and Burros and TerraWind Ranch Eco-Action Group, withdrew Appeal #0007. The remaining four appeals were considered in my decision. Appeal #0006, Arizona Game and Fish Department (AZGFD), originally contained eight appeal issues. Seven of those issues were withdrawn by the AZGFD on May 9, 2016 and only Issue No. 8, which concerns recommended wilderness designations, was retained and considered. The four appeals addressed in my review and decision are as follows:

Appeal #0005 – Joe Shirley, Jr., Chairman of the Board, representing Board of Supervisors of Apache County

Appeal #0006 – Larry D. Voyles, Director, representing Arizona Game and Fish Department

Appeal #0008 – Jay Lininger, representing Center for Biological Diversity and co-appellants: Grand Canyon Wildlands Council, Sierra Club, Western Watersheds Project and White Mountain Conservation League

Appeal #0009 – Mary Vander Ploeg

Each lead appellant will receive notification of my decision. The final appeal decision is available via the web at www.fs.fed.us/appeals or in hard copy, upon request.

You published the ROD for the Forest Plan on September 25, 2015, revising the 1987 Apache-Sitgreaves National Forests Land Management Plan. The revised Forest Plan conforms to the



1982 planning regulations at 36 CFR 219 [1982, as amended] (ROD, p. 9), last published in the Code of Federal Regulations on July 1, 2000¹. The record for the appeal to the Chief of the Forest Service was transmitted in conformance with the Optional Appeal Procedures at Section 15(a).

Apache-Sitgreaves National Forests Land Management Plan

The Forest Plan guides the Apache-Sitgreaves National Forests in fulfilling their stewardship responsibilities to best meet the needs of the American people for the present and into the future. The Forest Plan provides a framework that contributes to sustaining native ecological systems by managing toward desired conditions that support native plant and animal diversity. The Forest Plan integrates forest restoration, watershed protection, vegetation resilience, wildlife conservation, and contributions to social and economic values, goods, and services. The Forest Plan is strategic in nature and does not specifically authorize or prescribe any specific projects or activities.

The Forest Plan includes “plan decisions” and “other content.”² Any substantive changes to plan decisions require a plan amendment with appropriate analysis as required under the National Environmental Policy Act (NEPA). A change to “other content” may be made using an administrative correction process. The public is notified of all administrative corrections of the Forest Plan.

Issues

This appeal decision is the outcome of a deliberative and extensive review process. My review of the appellants’ concerns provides responses to issues involving complex regulatory and management issues. Although some issues raised in the appeals are not specifically cited in this decision, all appellants’ concerns have been considered. My appeal review focused mainly on compliance of the ROD and FEIS with applicable law, regulation, and policy, as cited by appellants.

¹ The Apache-Sitgreaves National Forests Land and Resource Management Plan revision was prepared under the Forest and Rangeland Renewable Resources Planning Act (RPA) of 1974 as amended by the National Forest Management Act (NFMA) of 1976 (16 U.S.C. 1600 et seq.), the implementing regulations of the NFMA at 36 CFR 219 (77 FR 21260, April 9, 2012), and the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 et seq.) and its implementing regulations (40 CFR 1500-1508). NFMA’s current implementing regulations at 36 CFR 219.17(b)(3)(77 FR 21270) allow the use of the provisions of the prior planning regulation, including its transition provisions (2000 Planning Rule at 36 CFR 219.35(a) and (b)) (December 18, 2009). The transition provisions of the 2000 planning rule allow the use of the prior planning regulations promulgated in 1982. Citations to 36 CFR 219 in this document refer to the 1982 rule.

² Plan decisions include: goals, desired conditions, objectives, standards, guidelines, suitability of uses, management areas (including designated areas), and monitoring.

Appellants raised appeal issues concerning procedural and planning requirements, as well as a range of natural resource issues, which included the effects of large fires on air quality and water quality, riparian habitat, viability of Federally listed and other species, wild horse management, wildlife quiet areas, recommended wilderness, energy corridors, designated wildland urban interface, and motor vehicle use restrictions. Appellants alleged violations of the National Environmental Policy Act (NEPA), National Forest Management Act (NFMA), Endangered Species Act, Clean Water Act, Clean Air Act, and Administrative Procedure Act (APA).

Appeal Decision

Your decision meets the requirements of applicable federal law, regulations, and policy and is therefore affirmed. The attachment to this appeal decision describes my response to those issues raised by appellants where I affirmed, without instruction, the analysis and decision to select Alternative B from the FEIS and approve the revised Apache-Sitgreaves National Forests Land Management Plan.

However, an issue related to rangeland capability and suitability need clarification in the planning documents. Below is my response to this issue for which I affirm your decision while also instructing needed follow-up action.

Rangeland Capability and Suitability

Issue: Appellants allege the Forest Service was arbitrary and capricious and violated NFMA in determining suitability and potential capability of National Forest System lands for producing forage for grazing animals, in providing habitat for management indicator species (MIS), and in failing to consider conflicts with wild horses and burros, wild animal populations, unsatisfactory range condition, drought, and effects from past grazing practices. Specifically, appellants contend:

- The Forest Service did not use the best available science in its grazing capability determinations and relied on 30-year old data, in violation of NEPA, NFMA and the APA; the Forest Service offers no explanation for why range capability determinations from the mid-1980s have not changed significantly and does not address the significance of newer information, some of which was provided during public comment periods.
- The Forest Service only applied two factors to determine capability (soil stability and forage productivity) but should have considered several criteria for designating lands as unsuitable for grazing including soil erosion hazard; steep slopes; proximity to streams or wetlands; threatened and endangered or proposed species' occupied or critical habitat; sensitive species, endemic species and MIS; and lands impacted by high-severity fire.
- The Forest Service failed to consider foreseeable future effects of chronic drought to range capability and suitability, and failed to candidly disclose past instances when livestock grazing exceeded capability. The Forest Service made arbitrary and capricious outdated assumptions of range capability and suitability, in violation of NEPA, NFMA and the APA. (#0008, pp. 28-32)

Response: The 1982 Planning Rule, Section 219.20, directs that “the suitability and potential capability of National Forest System lands for producing forage for grazing animals and for providing habitat for management indicator species shall be determined” Section 219.20(a) requires that:

Lands suitable for grazing and browsing shall be identified and their condition and trend determined. The present and potential supply of forage for livestock, wild and free-roaming horses and burros, and the capability of these lands to produce suitable food and cover for selected wildlife species shall be estimated. The use of forage by grazing and browsing animals will be estimated. The use of forage by grazing and browsing animals will be estimated. Lands in less than satisfactory condition shall be identified and appropriate action planned for their restoration.

Capability

The 1982 planning rule defines *capability*:

The potential of an area of land to produce resources, supply goods and services, and allow resource uses under an assumed set of management practices and at a given level of management intensity. Capability depends upon site conditions such as climate variability, slope, landform, soils, and geology, as well as the application of management practices, such as silviculture or protection from fire, insects, and disease.

The Forest applied that definition in making the capability determination for the 1987 Forest Plan.

The 2015 Forest Plan follows the same definition (Forest Plan, p. 133):

Capability is the potential of an area of land to produce resources and supply goods and services. Capability depends upon current conditions and site conditions such as climate variability, slope, landform, soils, and geology. Capability was determined in the 1980s during the first round of forest planning by compiling data from the most recent individual grazing allotment analyses. Landscape scale conditions have not changed significantly since this evaluation.

Region-specific program management direction and guidance is provided through regional supplements to the Forest Service Manuals and Handbooks and regional guidebooks. The Southwest Region developed an operational draft document, *Determination of Lands Suitable and Capable for Livestock Grazing – Southwest Region (R3) Plan Revisions* (2010 Regional Guidance), to provide guidance to forest plan revision teams. This document was reviewed and revised as appropriate in January 2010 to conform to the requirements of the 1982 Planning Rule provisions regarding requirements for range. This document is available in the project record. On page 2, the guidance provided the following with respect to making the capability determination:

The capability of National Forest System lands in the Southwest to produce forage for grazing animals was determined in the 1980s for the first round of forest planning. Most landscape scale conditions that determine capability (such as landform, geology, slope, climate) have not changed significantly since the first evaluation, therefore capability

determined in the original Forest Plans are likely still applicable. Forests should review the current capability determinations to ensure they are still valid.

The Forest reviewed the 1980s capability determinations used to prepare the 1987 Plan and concluded those determinations were still valid. This conclusion is disclosed in Appendix B of the FEIS in the “Livestock Grazing Suitability Analysis” section (pp. 820-823):

Capability to produce forage for grazing animals was originally determined in the 1980s during the development of the 1987 plan and was based on individual allotment data. Landscape scale conditions that determine capability have not changed since the first evaluation. The Analysis of the Management Situation (1983) and the Environmental Impact Statement (1987) document the analysis of grazing capability and suitability for the 1987 plan.

Access to the best available data is a requirement of 36 CFR 219.12(d). The Forest Plan and the FEIS document that the Forest reviewed the capability analysis conducted in the 1980s to support the 1987 Plan and concluded the data used to still be the best available. However, the record lacks clear rationale to support the conclusion that the data from the 1980s is the best available in validating current range capability across the Forest.

Suitability

The 2010 Regional Guidance instructs units on conducting a comprehensive review of suitability. The 2010 Regional Guidance provides a step-by-step process, starting from the current Forest Plan suitable and non-suitable classifications of lands. The 2010 Regional Guidance states that the lands’ compatibility with desired conditions is the basis for determining whether lands are suitable. The 2010 Regional Guidance also directs the forests to review recent NEPA-based decisions for grazing allotments in the area: areas for which “no grazing” decisions were made are “probably not suitable for livestock grazing.”

The Forest Plan (p. 133) and the FEIS (Vol. I, pp. 479-480) define suitability as:

Suitability is the appropriateness of applying certain resource management practices to a particular area of land, in consideration of relevant social, economic, and ecological factors. Suitable rangeland is determined based on compatibility with desired conditions and objectives in the plan area. Lands within the plan area are not identified as suitable for a certain use if that use is prohibited by law, regulation, or policy; would result in substantial and permanent impairment of the productivity of the land or renewable resources; or if the use is incompatible with the desired conditions for the relevant portion of the plan area. A unit of land may be suitable for a variety of individual or combined management practices.

Recommended research natural areas, existing research natural areas, and current National Forest System land not in a grazing allotment were considered to be “not suitable” for livestock grazing and all other lands that were not within a recommended research natural area, not within an existing research natural area and not within a grazing allotment were considered to be suitable for livestock grazing (Forest Plan, table 6, p. 134).

The suitability analysis process and resulting determinations are disclosed in Appendix B of the FEIS. To calculate suitable acres for livestock grazing in the action alternatives, the Geographical Information System (GIS) tool was used to subtract areas not in an allotment, from what was shown in the 1987 plan. The result was used as the baseline in Alternative A. The record documents the Forest reviewed the suitability baseline and systematically adjusted the baseline where overlaps with the Black River Conservation Area and Research Natural Areas occurred. For Alternatives B, C and D, the recommended Research Natural Areas were removed from the acreages suitable for livestock grazing. The differences in acreages are related to the lands recommended for Research Natural Areas (FEIS, Appendix B, table 191, p. 823). The record also demonstrates that defining an area to be suitable for grazing does not equate to a decision to authorize livestock grazing. Such a determination is best done on a site-specific basis for each allotment. The final decision to authorize livestock grazing would be made at a project (individual grazing allotment) level. On a site-specific basis, grazing allotments are guided by an adaptive management strategy whereby results from long- and short-term monitoring are used to determine yearly stocking rates, pasture rotations, and whether other adjustments are needed to meet management objectives and desired conditions for rangelands (FEIS, Appendix A, p. 739). The FEIS (Vol. I, p.480), states:

Under **all alternatives**, livestock grazing on the Apache-Sitgreaves NFs would potentially be affected by other Forest Service activities, such as mechanical treatments, prescribed fire, noxious and invasive weed management, and special designations...[and] adjustments to season of use, grazing intensity, kind and class of livestock, or type of grazing system may occur after site-specific analysis.

Additionally, livestock grazing may be affected by competition or conflict with other resource users (e.g., recreation, wildlife) or through the need to protect other resources such as soils, vegetation, and wildlife habitat.

The appellant contends several factors should have been considered when determining suitability, including lands impacted by high-severity fire. Several of these site-specific factors are discussed in documents available in the project record, including the March 23, 2015 Range Specialist Report. For instance, pages 6-9 of this report describes how past wildfires, invasive species, and unauthorized livestock grazing have affected riparian areas and overall ecological conditions and trends on allotments within the planning area. Pages 10-14 of this same report then describes the environmental consequences of implementing proposed management activities under each planning alternative on livestock grazing in the future, considering wildfires and prescribed fires, vegetation treatments, and riparian restoration. Evaluation of allotments affected by the 2011 Wallow Fire are specifically mentioned in the December 12, 2012 and 2015 Range Reports. The 2012 Range Report also describes typical impacts from prescribed fire and wildfires and how they can alter forage availability. The May 12, 2012 Forage Estimates and Range Condition Report documents how allotments affected by the 2002 Rodeo-Chediski were managed following this fire. The record shows appropriate consideration of lands impacted by wildfire.

Therefore, we conclude that the record indicates the consideration of suitability based on the 1987 baseline for Alternative A, and deducts acreages recommended for Research Natural Areas for Alternatives B, C and D. However, while the record shows appropriate consideration, the record does not clearly show an evaluation of lands in unsatisfactory condition or possible conflicts with

other uses, as required by the 1982 Planning Rule Sections 219.20(a) and (b), and how these should or should not be factored into the suitable acreages. The May 19, 2011 Range Specialist Report and the 2012 Forage Estimates and Range Condition Report prepared prior to the DEIS provides some additional detail regarding consideration of range condition and trend, however, this information was not clearly carried forward into the 2012 Range Specialist Report or the 2015 Range Specialist Report prepared for the FEIS. No explanation is given. This information was also not documented in the FEIS. The *Ecological Sustainability Report, Apache-Sitgreaves National Forests* (November, 2008), discusses decisions to remove livestock grazing from impacted Potential Natural Vegetation Type's (PNVT) to protect resources such as soils, riparian areas, and recently burned areas. These decisions were made on a site specific basis using adaptive management. The record does not clearly document whether desired conditions or past site-specific NEPA-based decisions for grazing allotment management plans were used to determine suitable acres, as directed by the 2010 Regional Guidance.

Drought and Climate Change

The 2010 Regional guidance includes direction on consideration of climate change:

Cyclical or temporal fluctuations in climatic conditions, such as El Nino cycles or drought periods, are not cause for reanalyzing capability, but should be considered by the Forest when making project level grazing decisions and responded to through adaptive management. Current climate conditions and trends have not been shown to be outside of historical norms for the Southwest.

The 2010 Regional Guidance also suggests forests may want to establish measures to monitor changing landscape scale conditions over time to help determine if future adjustment to capability determinations may be warranted.

Climate has been variable since the first round of forest planning was completed in the 1980s. To address climate change issues, Appendix A of the Forest Plan, *Climate Change Trends and Apache-Sitgreaves NFs Land Management Planning*, describes climate patterns and trends in the Southwestern United States and how climate patterns may be affected in the near future. Adaptive management strategies to address potential change in climatic conditions are described in the appendix.

The appellant also contends that the agency must disclose past instances when livestock grazing exceeded capability. The appellant incorrectly uses the term 'capability' in this contention instead of referring to 'capacity'. There is no specific requirement that a programmatic suitability or capability analysis conducted at a forest plan level consider all past instances where grazing may have exceeded capacity for a particular pasture or allotment. These types of data are more appropriately used for determining range condition and trend and are an important part of site-specific range NEPA decisions for individual allotment management plans, development of terms and conditions of individual grazing permits, and/or approval of annual operating plans (2015 Range Report, page 17).

In summary, we conclude that the record documents compliance with the 2010 Regional Guidance regarding how to consider drought and climate change in capability evaluations. The

record documents climate change has been variable and adaptive management strategies will be used to address future issues, which may result from continued drought or climate change, on a site-specific basis. Therefore, contrary to the appellant's contention, the Forest did consider effects of chronic drought. The record also documents how data regarding instances when grazing may have exceeded capacity are used.

Conclusion

I find no violation of law, regulation or policy. The record demonstrates compliance with 36 CFR 219.20(a) requirements. The FEIS and associated planning record include documentation to indicate that grazing capability and suitability were determined, that changes in resource conditions and climate were considered and that range condition and trend were identified. Appropriate guidance is provided to support development of site specific (project level) allotment management plans that provide for restoration of those lands.

Instruction: Although the record demonstrates compliance with 36 CFR 219.20 and the 2010 Regional Guidance, locating that information in the planning record was difficult and making connections between information presented in earlier range reports and those used to prepare the FEIS and Forest Plan was difficult. The record lacks complete rationale for the conclusion that range capability data from the 1980s are still the best available in validating current range capability. In addition, the *2011 Range Report* and the *2012 Forage Estimates and Range Condition Report* prepared prior to the DEIS provide additional detail regarding consideration of range condition and trend but this is not clearly documented in the *2012 Range Report*, the *2015 Range Report* prepared for the FEIS, the FEIS itself, or the Forest Plan.

Therefore, I am instructing you to include in the planning record: 1) your analysis of the 1980s range capability data and the determination that these data continue to be accurate for the new Forest Plan; and 2) your consideration of range condition and trend in determining rangeland suitability and the source of this range condition and trend information.

This appeal decision is the final administrative determination of the Department of Agriculture, unless the Secretary, on his own initiative, elects to review the decision within 15 days of receipt (Optional Appeal Procedures, Section 17(d)). By copy of this letter and notification of availability on the Web, I am notifying all parties to this appeal.



BRIAN FEREBEE
Reviewing Officer for the Chief

cc: Appellants; Region 3 Planning; Region 3 Appeals