

June 5, 2014

NOTICE OF APPEAL

Submitted electronically to: appeals-chief@fs.fed.us

USDA Forest Service
Attn: Appeal Reviewing Officer
1400 Independence Ave., SW
EMC-JAR, Mailstop 1104
Washington, D.C. 20250

Dear Forest Plan Revision Team:

This is an appeal of the Kaibab National Forest Record of Decision and EIS for the Kaibab Land Resource Management Plan. The decision was signed on February 3, 2014 by Regional Forester Calvin Joyner; the legal notice was published on March 7, 2014 in the Arizona Daily Sun. This appeal is submitted on behalf Rick Erman, Friends of Anderson Mesa, and Western Watersheds Project, Inc. Rick Erman is a hunter, hiker, and avid user of public lands including the Kaibab National Forest. Friends of Anderson Mesa is a conservation organization that focuses on Western rangelands and rangeland habitat for antelope and other native species. Western Watersheds Project is a non-profit conservation organization based in Hailey, Idaho and with offices throughout the West. Members of Western Watersheds Project and Friends of Anderson Mesa frequent the Kaibab National Forest and take a keen interest in the sustained protection of its rangelands, soil productivity, wildlife habitat, water quality, cultural and natural resources, and scenic vistas. I represent all three parties, and can be reached at:

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Introduction

The National Forest Management Act, or NFMA, was passed at a time when there was a great deal of controversy about whether the U.S. Forest Service was managing the nation's forests in a sustainable way. Road building and clearcut logging were seen by many to be excessive on national forests, requiring a congressional reining-in of the agency. This history can be found in many places, among them the book *A Conspiracy of Optimism* by Paul Hirt, which is a full-length history of the Forest Service.

The NFMA was seen as a way to put constraints on an agency which had hitherto enjoyed almost unfettered power over how it managed the public's forests. In fact, early versions of the NFMA were called the "National Forest Timber Reform Act." and the final Act, along with its regulations, establish pretty clearly that Congress intended to put some controls on how the Forest Service operated. As Charles Wilkinson and H. Michael Anderson put it in their book *Land and Resource Planning on the National Forests*, "the 1976 Act fundamentally altered the traditional relationship between Congress, the courts, and the Forest Service by adding procedural requirements for planning and by imposing substantive restrictions on timber harvest in the national forests." Wilkinson and Anderson, *Land and Resource Planning on the National Forests*, 69 (1987).

This appeal is in large part filed because the Kaibab National Forest has unlawfully prepared a Forest Plan that is designed to escape review by the courts and thwart enforcement by the public. This plan and its authors reflect a view of the NFMA that is contrary to congressional intent, and the plan does not comply with the law or the 1982 regulations under which it was ostensibly prepared. It also fails in many ways to meet the National Environmental Policy Act, or "NEPA."

A few brief introductory points.

1. The timber-centric focus of this Plan is disappointing. The Kaibab National Forest was able to identify four "priority needs for change." The first was a need to "modify forest structure." This will be done by logging, of course, and for that reason logging and old growth standards from the original plan have been relaxed. The second was to "protect and regenerate aspen." This too will require logging – in fact the Kaibab Forest intends to log 800 acres of conifer stands to accommodate this need. The third, which is to protect riparian areas, does not seem to involve logging. The fourth is to reduce tree encroachment on grasslands, which does. It is disappointing that the Forest Service seems to blind to just about any problem that it does not think can be solved with a

chainsaw, but given this Forest's culture and history, it probably should not be a surprise. Still, how is it possible that livestock grazing, which is a chronic, long-term impact on soil productivity, water quality, wildlife habitat, invasive species, archaeological resources, and recreation, and which the Kaibab National Forest has time and time and time again found to be causing damage to those resources, escaped notice in this Forest Plan? How is it that it was selected as an “issue” because of the degradation it causes to various resources, but then essentially vanished from the Plan? Could it be that the other problems' solutions entail increasing resource extraction—mainly logging—but resolving the livestock grazing problem entails *reducing* resource extraction? How disappointing that the Forest Service promises in this Plan to log thousands upon thousands of acres of trees, including large, old-growth trees, in order to solve its aspen, tree-encroachment, and alleged forest-health problems, but can only bring itself to promise to fence *20 acres a year* of aspen stands to protect them from cows, even though livestock are a primary threat to aspen.

The National Forest Management Act came about because of just this sort of timber-centric, resource-extraction focused mentality. It is no surprise the authors of this Plan take such exceptional measures (outlined below) to recast the NFMA into an Act that is unenforceable and merely “aspirational,” and that will disallow challenges by the public to decisions made by the Forest Service in the next planning era.

2. As noted above, livestock grazing is a widespread, year-round, chronic environmental impact to just about every single forest resource. The Forest Service implicitly acknowledged this by stating that “livestock grazing by cattle and sheep causes watershed, stream, and grassland degradation” and declaring this to be “an issue” in developing its Draft EIS. DEIS at 7, FEIS at 8. But in response to comments the Forest Service states that “We developed alternatives only in response to issues raised. No specific issues were raised related to grazing that were not already addressed.” FEIS at 396. The Forest Service also declares that “there is no need for a guideline specific to restricting grazing in grassland restoration areas” because other, non-binding mechanisms exist to do this—although it does not say what those are. *Id.* The Plan also tells us, oddly, that “Ongoing grazing effects to wildlife were not specifically called out in the DEIS analysis because grazing did not emerge as an issue.” *Id.* This is in response to a commentor noting that “the negative effects of grazing are only superficially addressed in the DEIS.” *Id.*

I think it does not require a lot of imagination to see why a member of the public who cares about this landscape, and who noted the fact that livestock grazing was determined to be an issue in planning because of the degradation it causes to streams, watersheds, and grasslands, might be disappointed with the final EIS's reversal on this matter and its flippant dismissal of this comment as unmerited because “grazing did not emerge as an issue.” Grazing *was* an issue, but it was an uncomfortable one, apparently, for the Forest Service to address, so the Forest Service simply refused to do so in any meaningful manner.

In the capability and suitability analysis, the Forest Service has decided to pretend that (a) the NFMA does not require any real analysis of capability or suitability; (2) any land allocations made are only for the purposes of a kind of thought experiment, and have no bearing on whether the land is actually grazed or not, (3) previous analysis done in the 1980's and 1990's can be used in lieu of new analysis even though that analysis was demonstrably insufficient, (4) in the cases where that analysis shows resource problems, it should be discounted because the analysis itself was not really all that good. Thus we have a closed loop: old analysis is sufficient to justify the Forest Services' determinations, and where it doesn't do so it should be discounted because it was old, outdated, and did not accurately describe the problem; and in any event it doesn't matter because Forest Plans do not establish land uses. Every single one of these premises is false. Appellant Rick Erman has spent years trying to get the most basic information out of the Forest Service as to how its grazing capability and suitability studies have been conducted, and the result has been a very long string of FOIA requests that read like an extended "Who's on First?" routine, with the Forest Service pointing to a new smokescreen every time. There is no capability/suitability analysis in this Plan, as we will show below.

3. The point of a Forest Plan is to set constraints on the agency, "minimum management requirements" beyond which an agency cannot go. But the Kaibab NF here has written a Plan that essentially does not have any minimum management requirements. Every standard or guideline that formerly restricted some action has been eradicated from the new Plan, and every new standard or guideline is either meaningless or toothless or, very often, both. There is no limit to grazing, no limit to logging, no limit to road building that is not set by the agency itself on a site-specific basis, and the Plan leaves a member of the public no power to challenge those decisions because all standards and guidelines are qualified and contain discretionary language.

This Forest Plan is unlawful and should be withdrawn and rewritten, with the old Plan and its old growth, goshawk, wildlife, and grazing amendments left intact until a new, lawful Forest Plan is prepared and finalized.

NEPA

1. Hard Look.

NEPA requires the Forest Service to take a "hard look" at the effects of its actions. This requirement applies to its analysis of the affected environment as well, because it is impossible to determine effects if the agency does not know the current conditions of the landscape. Moreover, NFMA requires a thorough cataloging of the landscape's challenges and conditions.

The Forest Service has fallen far short of the mark in this respect. Repeatedly the

Forest Plan defers programs that should be part of the Plan to some future, undetermined date. As an example, aspen “strategies” are deferred to the future, even though aspen management is one of just four challenges the Forest Service ostensibly found. Plan at 29. Worse, the Plan identifies ungulate grazing as a significant contributor to the poor state of aspen regeneration on the Forest, but nowhere evaluates what that contribution is. This makes the plan to come up with strategies later and to fence just 20 acres per year of aspen from ungulates (out of many hundreds of acres of aspen that are in grazed areas) no more than an arbitrary number pulled from a hat. If ungulates are the greatest threat, more acres are called for – but the Forest Service has not determined what the threat is or where it is.

The Plan also tells us that grassland encroachment is “exacerbated by recent increases in erosion and nonnative species,” but reveals nothing about where this is occurring, how much it is occurring, or what the plan is to arrest these increases. In fact, elsewhere the Plan denies that erosion is increasing at all. Plan at 35. Yet it calls for logging some five to ten thousand acres per year of trees, apparently in areas where erosion and non-native species are on the increase. Again the timber-centric views of the Plans authors have revealed themselves. It is arbitrary and capricious to set these kinds of specific, quantified goals for logging while simultaneously neglecting to quantify the other concerns, or even reveal where these alleged areas are. The Forest Service is eager to solve any problem it can with chainsaws, but sweeps the other problems away without discussion—even those problems that are made worse with logging.

The same problem exists with wetlands, another area the Forest Service has prioritized as a problem. Of the 1,500 acres of wetlands, the Forest Plan sets an objective of restoring six acres in five years. For that not to be an arbitrary number, the Forest Service must reveal how many degraded acres there are. Plan at 41.

As for natural springs, the Plan sets a goal of “restoring” ten springs in five years. Yet elsewhere we learn the Forest Service doesn't even know how many natural springs there are on the Kaibab National Forest. Plan at 46, 47. This again proves to be an arbitrary number, particularly since we learn that “About half of the natural springs and other waters on the Kaibab NF are currently departed from reference conditions.” Plan at 3, 4. Plan at 46, 47. Half of what number? Half of twenty? Half of three hundred and twenty? What makes the restoration of ten springs anything but an arbitrary number without this needed underlying knowledge?

The Plan calls for new fencing to be 18 inches from the ground, even though the best available science states 20 inches are needed for antelope, and gives no reason for the departure from AZGF recommendations, and of course no analysis of the effects of this change upon antelope. Plan at 69.

The Plan also fails to take a hard look at the capability/suitability question. The Plan waves away any concerns about suitability because “since the original plan was approved, each allotment on the Kaibab NF has received site-specific environmental

review.” Plan at 111. The Plan states that a suitability analysis was performed during these site specific NEPA documentation, and each of these were “reviewed for areas where livestock grazing was not authorized.” But in the past ten years just ten grazing decisions have been signed, amounting to only a fraction of the Forest. Three of those were signed as categorical exclusions, meaning very little analysis was completed for them. Worse, the Forest has repeatedly and affirmatively stated that suitability analyses are not done in site specific actions. See for example the January 3, 2005 Forest Service response to the Forest Guardians appeal of the Homestead-Davenport grazing decision, which raised this issue. The Forest responded to Forest Guardian's complaint about the lack of a suitability analysis by stating “Response: NFMA does not require that a suitability analysis be conducted at the project level.” See also the Forest Service's Feb. 11, 2005 response to Forest Guardians appeal of the Anita-Cameron EA. In that response letter, the Forest Service says:

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 Kaibab LRMP. The 36 CFR 219 regulations are not applicable in this case; therefore, the decision is not premature.

The Forest Service gives similar responses elsewhere, for example in their January 18, 2008 appeal response to Rick Erman and Friends of Anderson Mesa, where they defend against Mr. Erman's charges that they did not complete a suitability or capability analysis by again deferring to the Forest Plan, and stating “The Responsible Official was not required to conduct a grazing suitability analysis for the allotments prior to making a decision.” Given these and other admissions in appeal responses over the years, how can the Forest Service now say that its suitability analyses were done in the individual NEPA decisions over the years? The Forest Service wants to have it both ways: they want to be able to tell people like Mr. Erman during their site-specific NEPA that the analysis was done in the Forest Plan, and then in the Forest Plan they want to say it was done in the site specific NEPA.

Moreover, the capability and suitability analysis that was done thirty years ago for the original Forest Plan was demonstrably insufficient and to rely on it now requires at least a showing of what went into that analysis.

The Forest Service has also failed to analyze the effects of eradicating the vast majority of its former standards. Pretty much the entirety of the 1996 Goshawk Guidelines have been eradicated, including requirements to identify key areas, to save all trees greater than 24 inches dbh, to strive to attain good to excellent range conditions, to implement restrictive use guidelines in degraded areas, to assure recovery of endangered species, and so forth. The Forest Service has also eradicated standards designed to

protect soils, watersheds, riparian areas, and rangelands. This is a significant change that was not analyzed in the EIS.

The Forest Service even deleted the word “viable” from the 1982 regulations, which require “viable populations” of native species be preserved throughout the planning area. Plan at 49. Why? The answer given, that the regs require it already, does not account for this simple deletion from regulations that are mostly no longer in force, no longer published in the CFR pamphlets in law libraries, and which are more than thirty years old. Will anyone remember this in twenty years, when the Forest Service is still ten years away from its third Forest Plan?

In place of the Forest Plan standards that formerly protected, or should have protected, Kaibab NF rangeland, the Forest Service now has the wishy-washy “guideline” that annual operating instructions “should” address “relevant” resource concerns. But of course annual operating instructions are not released for public comment and have no requirements that the Forest Service ever go *looking* for resource concerns. Most resource concerns are self-reported by the permittees, who have no incentive to self-report overgrazing. This is a tremendous step backward from the former plan and its standards, and the drawbacks and potential pitfalls were never revealed, analyzed, or discussed.

The Forest Service did not analyze the effectiveness of the former standards, and to what degree they were followed or not followed. The site-specific analyses that the Forest Service relies on to falsely claim that suitability has been analyzed in the past reveal many shortcomings and failures of the old Plan, most often because monitoring was not done or because grazing decisions were repeatedly deferred year upon year, and the Forest Plan standards were never enforced. This has left us with an affected environment that has not improved, which is not a reason for weakening the standards.

The Forest Service has also failed to reveal the poor state of knowledge of the grazed rangelands. Many allotments have gone years or decades in between monitoring. For example, the Pine Creek, Seven C-Bar, and Twin Tanks analyses, which are currently in litigation, both revealed downward trending range condition and decades of neglect, but the Forest Service never reveals findings like these, preferring to present a story in this Plan and EIS that suggests all is well because the allotments have been analyzed at least once since the original plan was prepared thirty years ago.

2. Range of Alternatives

The Forest Service did not evaluate a sufficient range of alternatives. Alternatives are intended to meet the issues in various ways. Here, the Forest Service has the exact same Desired Future Conditions, Objectives, Guidelines, and Standards for every

alternative other than the “No Action” alternative. But these are the central aspects of the Plan, and the Forest Service has an obligation to consider competing ways to achieve its objectives. As a straightforward example, the Forest Service has determined that aspen regeneration is an issue that needs priority treatment. One major contributing factor to aspen decline is ungulate grazing, and so the Forest Service has determined it will fence an average of 20 acres of aspen per year for ten years. Why not a range of alternatives that looked at more or less fencing? Since this is a major issue for the Plan, a range of approaches to resolve the issue is needed. I suspect the reason no range was provided is that the Forest Service actually has no idea, and does not want to find out, how much ungulate grazing is contributing to the problem. So the Plan just sets a very low, unenforceable, and arbitrary number that it can ignore at its discretion in the coming years.

This is just one example: others abound. Many of the guidelines could be adjusted to meet desired conditions more or less quickly depending on how important meeting those conditions is regarded to be. Different standards could also be considered. For example, one alternative could have a more restricted grazing plan, or a more accelerated recovery of the degraded wetlands, grasslands, and soils that are hinted to exist on the Forest.

Suitability is another feature that could be adjusted. The Forest Service is incorrect when it says there is just one answer to whether a landscape is suited for livestock grazing. Suitability is a judgment call, so there are many different ranges of “suitability.” (The Forest Service *did* adjust what it considers “suitable” land for logging, and the same principles apply to grazing.) Capability is a question of whether or not grazing can occur at all; suitability is whether it “should.” And because that is a matter of opinion, a different suite of suitability allocations should have been provided. For example, the Forest Service could have considered an alternative that declared that all or some of the areas that remain in “Very Poor” condition after nearly thirty years of management under the old plan are unsuitable for continued grazing. (We note that the Forest Service acknowledges that around 25 percent of its grazed landscapes are currently in “Very Poor” condition, and up to about half are in downward trend. Forest Plan at 472.)

Of course, similar challenges could be made for every aspect of this plan, particularly with respect to logging. We leave that point for our colleagues in the other environmental appeals to make, but we join with them in the concern.

NFMA

1. Capability/Suitability

The Kaibab Forest Plan has completely failed to satisfy the NFMA's requirements with respect to grazing suitability and capability.

The 1982 NFMA regulations state that grazing suitability and capability “shall be determined” and that “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.” 36 CFR 219.20. Alternatives are to consider “direction for rehabilitation of ranges in unsatisfactory condition” and the lands are to be “managed in accordance with direction established in the Forest Plans.” *Id.*

A review of the Kaibab Plan reveals a wholesale failure to meet these requirements. There is no capability analysis because the Plan defers to the last planning round, but does not show what calculations were made in that round and does not defend those calculations, or reveal why they accurately represent capability.

The Plan reveals that some 25 percent of grazed lands are in “Very Poor” condition but does not reveal where they are and does not defend its conclusion that they are suitable for continued grazing. Plan at 472. It reveals that “a majority” of grazed lands are either in “static” or “upward” condition, but does not state what the number is, so a reader is left to conclude that some amount up to 49 percent are in downward trend. It also frankly rejects the regulation's call that lands in less than satisfactory condition be identified and actions planned for their restoration when it abandons any effort to even determine what lands are in satisfactory condition, refuses to define satisfactory condition, and eliminates the former Forest Plan standard that required those lands be rehabilitated. The Plan also defies the regulations by stating that any suitability determination “does not mean that grazing will or will not occur in a particular area” even though the regulations make plain that this is exactly what the determination is meant to do. Plan at 472. Evidently the authors of this Forest Plan feel that suitability determinations are meant to be mere thought experiments, very expensive to do but with no on-the-ground value or meaning.

The Forest Plan also pretends that these determinations have already been made in the site-specific analyses; as we showed above, when the issue was brought up in appeals of those very same site-specific analyses, the Forest Service insisted that suitability was only a matter for Forest Plans.

Finally, the authors of the Plan admit that even the sparse range trend and condition analyses they have are not useful for determining suitability, claiming that “there is not a strong correlation between condition class and ecological condition.” Plan at 472, 3. In sum, the Forest Service has wholly neglected this key component of the NFMA.

The Forest Plan repeatedly states that because grazing allotments have undergone NEPA in the past 22 years, no suitability analysis is needed. See e.g. Plan at 395. But the working definition of “suitability” in this Plan is areas where grazing cannot occur and still meet the Desired Conditions, which had not even been formulated in 1992! The logic in this document surrounding capability and suitability is circular at nearly every juncture.

As a defense to eradicating the former standard that less than satisfactory rangelands be corrected, the new Plan assures the reader that any “relevant resource

concerns” will be addressed in the Annual Operating Instructions. But these instructions are essentially a letter between the Forest Service and permittees: they undergo no NEPA review and the Forest Service is under no obligation at all to look for resource concerns, and many allotments on this Forest are rarely if ever visited by Forest Service personnel. NEPA documents often give ten-year time frames for monitoring, and even those are unenforceable. The permittees themselves of course have zero incentive for self-reporting overgrazing, so this new “guideline” is consequently hollow and not enforceable by anyone. This is a violation of the spirit as well as the language of the NFMA.

The Plan's assurance that “if grazing was contributing to unsatisfactory soils, the grazing management would be adjusted” is completely unwarranted. For one thing, there is no longer a requirement to find unsatisfactory soils, or even a definition of what they would be, because that has been removed from the Plan. Even if some member of the public were to bring such a thing to the attention of the Forest Service, the Forest Service would be under no obligation to do anything about it because, there being no agreement as to what “unsatisfactory” is, it would always be in the power of the Forest Service to ignore. That was not the case in the past.

And even in the past, when there were standards that required management changes, the Kaibab National Forest fought hard to avoid making those changes. For example, on the Seven C-Bar allotment no monitoring occurred from 1984 to 2007, and the 2007 monitoring showed all sites to be in poor or very poor condition. This was a large departure from the 1984 condition, which was “fair” at all sites. Instead of “adapting” its management or making any changes, the Forest Service characterized all sites as “remaining static or had an upward trend since being established,” even though the score sheets completed by the Forest Service range specialist showed the area to be in downward trend. The Forest Service claimed this trend was only an artifact of a loss of “cool season grasses” and so should be ignored. Seven C-Bar Decision Notice, September 26, 2008.

Similarly, on the Pine Creek Allotment, 21 percent of the soils were found to be in “unsatisfactory” condition where “the current rate of erosion is greater than the tolerance threshold.” It stated there was “a permanent loss in soil productivity” on those lands. Four of five monitored sites were in downward trend, all were rated “Poor.” But the Forest Service made *no changes* in grazing and again falsely stated in the Decision Memo that “all monitoring sites have either remained static or had an upward trend.”

It seems the Forest Service, tired of having to squirm and circumvent its Forest Plan standards, has elected simply to eradicate the problem by eradicating the standards. But it is very clear that a standard that requires only that the Forest Service balance “capability” with livestock numbers and voluntarily address problems it sees as “relevant, without any requirement that it ever look for those problems, cannot meet the NFMA or its implementing regulations.

The Forest Service states that “Livestock grazing allotments on the Kaibab NF are

not grazed at levels that limit pronghorn populations.” Plan at 401. This statement is baseless. Pronghorn require cover for fawning, and the use guidelines that the Forest Service presents to support its statements in no way result in the needed cover. Only a stubble-height guideline could do that, or a management standard that addressed cover during fawning season, and the Plan has carefully eradicated any standard that would provide that. Just across the border on the V-Bar allotment the Forest Service outright defied Arizona Game and Fish on this issue, and made it clear that where livestock wants and pronghorn needs collide, the Forest Service is all too willing to favor the livestock. It is also untrue that the Plan and past site-specific analyses addressed pronghorn.

The Forest Service's statement that because “grazing utilization is set for all allotments at the conservative level of 30 to 40 percent” pronghorn will not be affected is also an untruth. The Forest Service's own technical paper, Range Technical Note No. 52, “Estimation of Range Use with Grazed-Class Photo Guides” has photographic depictions of what 30 and 40 percent use looks like and it is nowhere near what is needed for antelope cover. Moreover, the Forest Service does not reveal that this use is averaged over large areas, which means that the accessible forage will be grazed much more heavily than 30-40 percent. Add these flimsy requirements to a program that does not oblige the Forest Service even to look for over-use and you have a recipe for badly overgrazed rangelands.

The Forest Service also states that “The forest plan is not the place to provide scientific justification for livestock use.” Plan at 401. But it *is* the place to do a real capability and suitability analysis, which is what we have called for. The Kaibab Forest has provided no evidence that they have met the 1982 regulations on this issue.

2. NFMA Alternatives.

The NFMA regulations contain direction that supplements NEPA with respect to alternatives. It states, “Alternatives shall be distributed between the minimum resource potential and the maximum resource potential to reflect . . . the full range of . . . environmental resource uses and values that could be produced.” 36 CFR 219.12(f)(1). And: “Alternatives shall provide different ways to address and respond to major public issues, management concerns, and resource opportunities identified during the planning process.” *Id.* at (4).

Effects of grazing were identified as an issue. DEIS at 7 (“Issues that served as the basis for Alternative Development: Livestock grazing . . . causes watershed, stream, and grassland degradation.”) But the Plan acknowledges that “there was no difference between alternatives with respect to grazing.” Plan at 410. The Plan also states, inexplicably, that “grazing effects to wildlife were not specifically called out in the DEIS analysis because grazing did not emerge as an issue.” Plan at 396. But the NFMA's requirements regarding alternatives were not met. A varying group of options that put varying constraints on grazing and had varying allocations of suitable lands was required

by the NFMA.

3. Standards and Guidelines

The NFMA requires standards and guidelines, which neither the statute nor the regulations distinguish—the terms are used interchangeably in the NFMA. The standards and guidelines are to ensure that “minimum management requirements” are met to protect streams, conserve soil and water, avoid permanent impairment of soil productivity, and maintain viable populations of native species. These minimum management requirements are to “guide the development, analysis, approval, implementation, monitoring and evaluation of forest plans.” 36 CFR 219.27. The Kaibab National Forest has not met this requirement because it has all but eradicated its standards that formerly provided these protections. In some cases there are wishy-washy, unenforceable “guidelines,” in other cases there simply is no protective mechanism in place. For example, for soils and watersheds there are no standards, just three guidelines that say the Forest Service “should” incorporate national best management practices, “should” implement erosion control structures in disturbed areas, and “should” revegetate with native plants. But the greatest threats to watersheds and soils are logging, road-building, and livestock grazing, and there are few places on the Kaibab NF where erosion control structures even make any sense. The watershed is threatened by continuous livestock grazing on fragile soils, a point formerly handled in the previous Forest Plan with mandatory range resource studies and standards that required the Forest Service to maintain soil productivity and watershed condition, and to minimize soil compaction and correct “less than satisfactory range conditions.” All these standards have now been eradicated, along with, as mentioned previously, wildlife standards such as the one that required the Forest Service to publicly identify key areas on grazing allotments and monitor them. The Forest Service has only baseless responses to these changes, such as that the requirements exist elsewhere in law or the Forest Service Handbook or Manual. But even where this is true, the Forest Service Handbook and Manual, like the Annual Operating Instructions, do not go through notice and comment and are unenforceable by the public.

The Forest Service has also abolished its 1996 Goshawk Guidelines, which contained many binding standards regarding logging and grazing, and replaced those standards with, in some cases, wishy-washy, unenforceable guidelines and in other cases, with nothing. This although those standards were the result of years of work and effort and represent the best available science to this day.

The key area requirement is one important standard, now gone. Notably, even the Department of Interior asked the Forest Service to reconsider this change.

A Few Concluding Remarks

Readers of this appeal will note that we find the Forest Plan to be very disappointing. Appellants have filed many comments and appeals of Kaibab grazing allotments over the years and have visited the Forest many, many times. We are disappointed on nearly every front. Obviously, it is not just disappointing but insulting to be told over and over again that we must wait for the new Forest Plan for a new suitability and capability study, and then told at the Forest Plan stage that this was completed during the very site-specific projects that we appealed on the issue. But for people like Appellant Rick Erman, the disappointment runs deeper. Mr. Erman was present and vocal during the first planning stage, and notes now that even then Aspen, for example, was a major topic in planning. He remembers Marlin Johnson speaking about the issue at KNF planning meetings. The Aspen problem is not “new,” as it is portrayed in this Forest Plan. It is simply a problem that has been ignored by the Forest Service for decades.

Similarly, we feel betrayed by the wholesale lack of attention to the impacts of grazing, which have been discussed and put off and ignored time and time again by the Kaibab NF. It was an issue during the first planning session, which is why standards were put in place and requirements to determine whether the landscape was in satisfactory condition were implemented. We were all assured that problem allotments would be repaired and positive steps taken on the grazing issue, but the KNF simply cast aside those promises in the subsequent decades, and now has discarded almost the entire edifice of grazing restrictions from the old Forest Plan. We and the Sierra Club and others have provided a great deal of input on this issue and it is sad to see it ignored again.

Also, long-term sustainability is the central driving theme of the NFMA, but there is little in the Plan that discusses this or even defines it, much less applies the idea to grazing. Even gathering the basic information about the condition of the lands, which NFMA requires, has been contracted out, so to speak, to the old NEPA analyses, which themselves failed to do this. Even in the few places the KNF states a new “plan” is needed to address a particular resource concern, the Forest Plan kicks the can down the road and makes a promise to create a plan rather than present one. Nothing in this Forest Plan provides any assurance that the KNF is on the path to long-term sustainability in terms of livestock grazing and resources it impairs, from soil productivity to water quality, vegetation, and wildlife habitat. The refusal even to require antelope-friendly fencing and road set-backs, as AZGF requested, is telling and sad.

Conclusion

The Forest Plan and its EIS and ROD should be withdrawn and a new EIS prepared that complies with law. A suitability and capability analysis must be ordered completed, and other portions of this Plan withdrawn or suspended until that analysis is done and has gone through notice, comment and appeal.

Sincerely,

/s Erik B. Ryberg

Erik B. Ryberg
Attorney for Western Watersheds Project, Friends
of Anderson Mesa, and Rick Erman