



United States
Department of
Agriculture

Forest
Service

Southwestern
Region

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File Code: 1570-1

Date: February 5, 1999

Budd-Falen Law Offices
Attention: Karen Budd-Falen
P.O. Box 346
Cheyenne, WY 82003-0346

Certified Mail - Return Receipt Requested
Z 095 964 196

Re: Second Level Appeal Review - Term Grazing Permit Suspension, Glen McCarty, Appeal #99-03-00-0027-A251

Dear Ms. Budd-Falen:

This letter documents my second level appeal review decision regarding your appeal (Appeal #99-03-00-0027-A251) on behalf of Glen McCarty, permittee on the Coyote-Whitmer and Turkey Creek Allotments, Alpine Ranger District, Apache/Sitgreaves National Forest.

Your appeal for second level review was filed on January 29, 1999, (letter postmark), which was received in this office on February 3, 1999. Forest Supervisor Bedell's decision, on the first level review of your appeal (#99-A/S-251-1), was made on December 30, 1998. According to the Forest's "Certified Return Receipt", Forest Supervisor Bedell's decision letter was postmarked January 4, 1999. The return receipt also indicated that Forest Supervisor Bedell's decision letter was acknowledged as received on January 11, 1999.

In your appeal for second level review, you state that the filing of the appeal is timely because it has been submitted within 15 days from the date of receipt. According to 36 CFR 251.88(c)(1), the time period for filing a notice of appeal begins the first day after the Deciding Officer's written notice of the decision, which normally would have been December 31, 1998. But, considering that the Deciding Officer's written notice of the decision was postmarked on January 4, 1999, the close of the appeal filing period should have been January 19, 1999. Furthermore, even considering the date (January 11, 1999), in which your office received the written decision, the filing of your appeal is still three days late according to the postmark on your appeal letter (January 29, 1999).

Forest Supervisor Bedell's written decision cited the appeal regulation and the timeframe (15 days) to file an appeal for second level review. I find that your second level appeal is not timely according to 36 CFR 251. Therefore, it is my decision to dismiss your appeal without a decision on the merits, pursuant to 36 CFR 251.92(a)(2).



Pursuant to 36 CFR 251.87(d)(2), the Chief of the Forest Service has discretion to review this decision. Pursuant to 36 CFR 251.100(c), a decision whether or not to review this decision will be made by the Chief of the Forest Service within 15 calendar days from the date of receipt of this decision.

Sincerely,

/s/ John R. Kirkpatrick

JOHN R. KIRKPATRICK
Appeal Deciding Officer
Deputy Regional Forester, Resources

cc:

Range Management, WO
Forest Supervisor, Apache-Sitgreaves NF
District Ranger, Alpine RD
Director, Range Management, R3
Appeals and Litigation, R3