

File Code: 1570-1

Date: January 31, 2000

Midnight/Mallette Grazing Association
c/o Rick Leon, President
P.O. Box 66
Cerro, New Mexico 87519

Certified Mail - Return Receipt Requested
P 544 215 596

Re: Appeal of Decision concerning permitted livestock, on the Midnight/Mallette Allotment (Appeal #99-03-00-0110-A251), Questa Ranger District, Carson National Forest

Dear Mr. Leon:

This letter documents my first level review decision of the appeal you filed on behalf of the Midnight/Mallette Grazing Association. This appeal is in regard to Forest Supervisor Gilbert Vigil's decision to reduce permitted numbers on the Midnight/Mallette Allotment. The appeal was filed and has been processed under the provisions of 36 CFR 251, subpart C.

BACKGROUND

- A. On March 7, 1995, scoping was begun for preparation of an environmental assessment analyzing the effects of livestock grazing on the Midnight/Mallette Allotment.
- B. On August 17, 1998, the environmental assessment was made available for public comment.
- C. Forest Supervisor Vigil issued his decision on April 21, 1999. His decision reduced permitted numbers from 268 cattle (cow/calf) to 214 cattle (cow/calf).
- D. On June 14, 1999, the Midnight/Mallette Grazing Association, appealed Forest Supervisor Vigil's decision.
- E. By letter dated August 11, 1999, Forest Supervisor Vigil mailed you a copy of his written responsive statement to your appeal.
- F. On October 28, 1999, I conducted an oral presentation concerning your appeal. At the conclusion of the oral presentation, I agreed to allow you until November 12, 1999, to provide me with written documentation of the information and views presented by the Association.
- G. By letter dated November 18, 1999, I closed the appeal record and informed you I would issue my decision on this appeal no later than January 31, 2000.

One other appeal was filed regarding this decision under the appeal regulations at 36 CFR 215. A review of this appeal was conducted pursuant to and in accordance with 36 CFR 215.17 with a decision rendered on July 28, 1999.

APPEAL DECISION

In your appeal you indicated that a reduction of permitted numbers for permittees who have taken every measure to be stewards of the forestlands, is unjust. You expressed concern that heavy browsing by elk, unauthorized livestock use, and recreation use is causing damage to the meadows and streams.

A review of the record discloses that: (1) the District Ranger has taken aggressive action to stop unauthorized livestock use; (2) grazing capacity calculations include both domestic and wild ungulate use; (3) less than 15 percent of allowable herbaceous forage use in key monitoring areas is attributed to elk; and (4) although the effects of dispersed recreation on soil and water resources is a concern, the impacts of that activity on forage capacity within the allotment is insignificant. Furthermore, in a previous appeal filed under the appeal regulations at 36 CFR 215, I affirmed the decision concluding that: (1) decision logic and rationale were generally clearly disclosed; (2) the benefits of the proposal were identified; (3) the proposal and decision were consistent with agency policy, direction and supporting information; and (4) public participation and response to comments were adequate. Your appeal raises no new information on issues not already considered.

During the oral presentation you specifically requested a 5 year non-use agreement for 5[0]4 head of livestock (268 minus 214 = 54). The non-use agreement would ensure resource protection and would provide the Forest Service the opportunity to validate the proposed stocking rate of 214 head of cattle on the allotment.

A review of the record demonstrates that you have been good stewards and are sincere about protecting basic vegetative, soil, and water resources on the Midnight/Mallette Allotment. It seems that we have a common goal to ensure the level of domestic livestock grazing is compatible with other resource goals and objectives. One approach to reach this goal would be to immediately modify the term grazing permit to reflect the results of the NEPA analysis, i.e. 214 head of cattle. Because rangeland management is an ongoing adaptive process where monitoring provides continued validation of the decision, another approach is to enter into a non-use agreement as you suggest. Because you are agreeable to entering into a non-use agreement it is my decision to affirm Forest Supervisor Vigil's decision to authorize 214 head of livestock on the Midnight/Mallette Allotment with the following instructions:

- 1) The actual permitted numbers and season of use will not be modified pending development of a memorandum of understanding (MOU) providing for resource protection and development non-use for 54 head of cattle for a three year period.

- 2) During the three year period of non-use the allotment will be stocked with not more than 214 head of cattle and appropriate studies will be conducted to verify stocking levels for the allotment.

3) At a minimum, the MOU must provide for at least one year of production utilization studies per R-3 Allotment Analysis Handbook (FSH 2209.21), adherence to established maximum forage utilization standards, and establishing accurate actual use records.

4) The MOU must also provide that, at the end of the 3 year period, the term grazing permit will be modified to reflect the stocking levels indicated by the monitoring information.

This decision is subject to discretionary review, pursuant to 36 CFR 251.87(c) and 251.100(b). A copy of this first level review decision, and the original decision, will be forwarded to the Chief of the Forest Service for discretionary review. The Chief will determine within 15 days from the date of receipt of this decision whether or not to review the appeal decision.

Sincerely,

/s/ James T. Gladen
JAMES T. GLADEN
Appeal Reviewing Officer
Deputy Regional Forester, Resources

cc:
Appeals and Litigation, WO
Forest Supervisor, Carson NF
District Ranger, Questa RD
Director, Range Management, R3
Appeals and Litigation Staff, R3
Forest Guardians