



United States  
Department of  
Agriculture

Forest  
Service

Southwestern  
Region

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File Code: 1570-1

Date: April 18, 2000

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

Certified Mail-Return Receipt Requested  
Z 555 042 187

Re: Appeal of Decision concerning permitted livestock, on the Midnight/Malette 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/Malette Grazing Association. This appeal is in regard to Forest Supervisor Gilbert Vigils' decision to reduce permitted numbers on the Midnight/Malette 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/Malette 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/Malette 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.



H. By letter of January 31, 1999, I issued my first level review decision.

I. On March 10, 1999, Dennis E. Bschor, Appeal Reviewing Officer for the Chief, notified you that he had elected to do a discretionary review of my decision pursuant to the authority set forth in 36 CFR 251.87(e)(1).

J. By letter dated April 7, 2000, Dennis E. Bschor reversed my January 31, 2000 decision with instructions.

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

The instructions in the Chief's April 7, 2000, letter directed me to either: 1) affirm the Forest Supervisor's decision to immediately modify the Association's grazing permit, or 2) reverse the Supervisor's decision with appropriate instructions to further study the allotment conditions before implementing any permit modifications.

As I documented in my January 31, 2000, decision letter, a review of the record disclosed 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 Forest Supervisor's 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.

Therefore, it is my decision to affirm the Forest Supervisor's decision to immediately modify the Association's grazing permit in accordance with the selected alternative (Alternative C). Alternative C provides for a reduction from 268 head of cattle (the existing permitted level) to 214 head of cattle.

This decision is subject to discretionary review, pursuant to 36 CFR 251.87 and 251.100(b). A copy of this first level review 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