



**United States
Department of
Agriculture**

**Forest
Service**

**Carson National
Forest**

**208 Cruz Alta Rd
Taos, NM 87571
(505) 758-6200
TT/TDD (505) 758-6329
Fax (505) 758-6213**

File Code: 1570/2230

Date: October 18, 2000

Clark de Schweinitz, Attorney at Law
Community & Indian Legal Services of NNM
P.O. Box 5175
805 Early Street
Santa Fe, NM 87502

Certified Mail 7000 0600 0024 2338 6511

Re: 36 CFR 251 Appeal by Porfirio Cisneros, Rito Segundo Allotment

Dear Mr. Schweinitz:

This is my review decision on the 36 CFR 251 appeal filed by Attorney Clark de Schweinitz who represents Mr. Porfirio Cisneros, permittee on the Rito Segundo allotment of the Questa Ranger District, Carson National Forest.

On May 24, 2000, District Ranger Ron Thibedeau issued a written decision regarding the denial of a fiscal year 2000 grazing permit application for 115 head of permitted sheep and a temporary conversion of 4 head of permitted cattle to 100 head of sheep on the Rito Segundo Allotment. This decision is subject to administrative review under the 36 CFR 251 appeal regulations.

Per 36 CFR 251.88 an appellant has 45 days, beginning the first day after written notice of the decision, to file a notice of appeal. A Notice of Appeal was dated July 3 and received July 5, 2000. The appeal period expired July 8, 2000. The filing of a Notice of Appeal was timely.

Your appeal requests that the Reviewing Officer allow the Cisneros family to continue their traditional use of sheep grazing on the Rito Segundo Allotment, to reverse the denial and termination of their sheep permit # 07015, and rescind the conversion from sheep to cattle in the May 24, 2000 letter from the District Ranger.

My review of this appeal has been conducted pursuant to and in accordance with 36 CFR 251. This decision is based on applicable laws, regulations, orders, policies and procedures. My review decision hereby incorporates by reference the entire 36 CFR 251 Appeal Record.

Appeal Summary

Appellant requested an Oral Presentation which was held on September 8, 2000 at the Old School House in Questa, NM. Attended by Appeal Reviewing Officer Gilbert Vigil.

The following are specific responses to arguments raised in the September 20, Submission and Summary of Oral Presentation document.



I. Forest Service Actions are Contrary to NF Policy Appellant contends that Forest Service actions with regard to the management of the Rito Segundo Allotment are contrary to National Forest Policy, including specifically the 1030 Objective and Policy, dated March 6, 1972.

Response: Review of the Appeal Record finds that management of the Rito Segundo Allotment is in compliance with the National Forest policy, laws, and regulation. District Ranger Ron Thibedeau and Forest Supervisor Leonard Lucero acted within their authorities.

The National Environmental Policy Act (NEPA) decision by Forest Supervisor Leonard Lucero dated April 17, 1996 ensured then permittee Mr. Floyd Cisneros (deceased) could continue grazing domestic sheep on the Rito Segundo allotment as long as he retained the grazing permit issued January 10, 1996 and modified June 6, 1997. The NEPA decision also contained a stipulation that upon transfer of the permit to a new permit holder, the class of livestock would change to cattle only. (AR 41)

There was no time constraint placed on when the conversion from sheep to cattle would take place, only that it would happen at the next permit transfer.

Unfortunately, Mr. Floyd Cisneros passed away in a tragic farming accident in 1998, and set the stage for a new permit transfer. Following his death, the grazing permit was held in the “estate of Floyd Cisneros”, and since he left no will for disposition of his property (grazing permit, livestock and base property), the status of the grazing permit and base property fell into succession laws of the State of NM. (AR 23).

On February 25, 2000, the District Ranger was notified by Attorney Clark de Schweinitz that Mr. Porfirio Cisneros was the successor to the estate (AR 26). The District Ranger acknowledged receipt of the letter and the request/application for a new domestic sheep permit on the Rito Segundo Allotment (AR 27).

District Ranger Ron Thibedeau acted within his authority to deny the grazing application for 115 head of sheep and a temporary conversion of 4 permitted head of cattle to 100 sheep. The reason for denial of the application was based on Forest Supervisor Leonard Lucero’s NEPA decision which reads “...upon transfer of the permit to a new permit holder, the class of livestock will change to cattle only.” (AR 28)

II. Forest Service Actions contrary to NF Policy, specifically the 1030 Objective and Policy, dated March 6, 1972

Response: In response to the 1030 Objective and Policy, dated March 6, 1972, I find that the Questa District Ranger and Carson National Forest Supervisor demonstrated an understanding of, and recognition of, the social, cultural, and economic needs of rural people who live close to the land, including permittees Mr. Floyd Cisneros (dec) and Mr. Porfirio Cisneros.

The NEPA decision made by Forest Supervisor Leonard Lucero ensured Mr. Floyd Cisneros (dec) could continue grazing domestic sheep on the Rito Segundo allotment so long as he

retained the grazing permit. Only at the next permit transfer would the conversion from sheep to cattle take place.

Over the past year, the District Ranger and Forest Supervisor have gone out of their way to present numerous, viable alternatives to Mr. Porfirio Cisneros to continue traditional livestock grazing of both sheep and cattle.

Mr. Porfirio Cisneros was offered several opportunities to graze both sheep and cattle, and could have increased from one to two permitted allotments, or possibly moved to another allotment at no additional purchase cost to him:

- **May 14, 2000** Forest Supervisor Gilbert Vigil and District Ranger Thibedeau offered Sheep permit on FS Tres Piedras RD – San Antonio Allotment
- or Sheep Permit on BLM Taos Field Office- Chambers Allotment
- and Cattle Permit on Rito Segundo (AR 27)

- **April 13, 2000** Informal disposition meeting held at Carson Supervisors Office. Mr. Porfirio Cisneros indicated interest and possible resolution for a “good cattle allotment close to Questa, NM”
Initial contact made with Valle Vidal Grazing Association

On July 3, 2000 in the Notice of Appeal letter, the appellant stated that none of these alternatives were acceptable. (AR 52, page 6). These examples clearly demonstrate an understanding of and responsiveness to the 1030 Objective and Policy letter of March 6, 1972.

III. Continuation of a Family Permit

The Cisneros family and related affidavits do not view their desire to continue grazing sheep and cattle as the issuing of a “new” permit but as a continuation of a family permit, for over 3 generations.

Response: The Term Grazing Permits for the Rito Segundo Allotment were applied for and issued as individual term grazing permits for Mr. Porfirio Cisneros (1960’s-1995) and Mr. Floyd Cisneros (1995-1998).

The term grazing permits for the Rito Segundo Allotment have never been held as Cisneros family grazing permits.

IV. Failure of the Forest Service, at the conclusion of the 1996 NEPA process, to provide a notice of adverse action and rights (to) a hearing under 36 CFR 251.80 and Washington Office memorandum dated August 29, 1995. No notice under Sec. 251 was given.

Response: At the conclusion of the 1996 NEPA process, in the Decision Notice and Finding of No Significant Impact signed by Forest Supervisor Leonard Lucero, dated 4/17/96, a decision was made to allow grazing to continue on the Rito Segundo Allotment. Terms and Conditions of Mr. Floyd Cisneros’ (dec) term grazing permit remained the same.

The term grazing permit was issued 1/10/96 and modified 6/7/97 to include 2 additional head of cattle. Before and after the 1996 NEPA analysis, Mr. Floyd Cisneros retained the exact same livestock numbers, class and season. (AR 41).

IV – Response -Continued

Notice of 36 CFR 215 and 251 was given in the Decision Notice and Finding of No Significant Impact section under Appeal Rights (AR 41). It includes a statement that the Forest Supervisor elected to make this decision instead of the District Ranger in order to coordinate the administrative review of appeals pursuant to 36 CFR Parts 215 and 251.

The NEPA decision to authorize grazing was appealable under 36 CFR 215. Permittee Mr. Floyd Cisneros (dec) did not appeal the NEPA decision under 36 CFR 215. The appeal record contains many references to discussions and correspondence between the permittees, Ranger Thibedeau, and his range staff, on the 1996 NEPA decision (AR 16, 23)

Per 36 CFR 251.80, decisions regarding issuance, approval, or administration of written instruments (grazing permits) are appealable. Per definitions in 36 CFR 251.81, this includes enforcement of terms and conditions, suspension, cancellation, and termination of written instruments (grazing permits).

Regarding the 1996 NEPA process, there was no adverse action appealable under 36 CFR 251. Terms and Conditions of the Rito Segundo grazing permit issued to Mr. Floyd Cisneros remained the same. There were no suspensions, cancellations, or termination of grazing permits. The term grazing permit retained the same livestock numbers, class, and season.

Because there was no adverse action to the grazing permit under 36 CFR 251.80, there was no reason to provide more specific notice of appeal rights under 36 CFR 251.

The August 29, 1995 Washington Office 1570/2200 memo paragraph 2 and 6 state: direct notice “should” be given at the same time and combined in a letter. “Should” is a discretionary term that did not apply in this situation, because there was no adverse action and therefore, no rights to a hearing under 36 CFR 251.80.

Following the death of permittee Mr. Floyd Cisneros, the grazing permit was held in the “estate of Floyd Cisneros”. Following settlement of the estate, Mr. Porfirio Cisneros, acquired the base property, and applied for a new grazing permit. This amounts to a transfer of the grazing permit.

As reviously stated, Forest Supervisor Leonard Lucero’s 1996 NEPA decision contained a stipulation that upon transfer of the permit to a new permit holder, the class of livestock would change to cattle only. (AR 41)

As the applicant for the new term grazing permit, Mr. Porfirio Cisneros submitted a permit application to graze sheep instead of cattle, and was denied by Ranger Thibedeau. (AR 28)

This is an appealable decision under 36 CFR 251. Mr. Porfirio Cisneros has now exercised his right to appeal under 36 CFR 251 (AR 52) and is given due process thru this appeal.

V. Flawed NEPA Process

Response: Review of the NEPA process documentation show that they followed all applicable laws, authorities, regulations, and requirements of an environmental analysis document. (AR 34a –48)

This was confirmed when the NEPA decision issued by Forest Supervisor Leonard Lucero on 4/17/96 was appealed by Forest Guardians on June 3, 1996 and subsequently affirmed by Appeal Deciding Officer/Deputy Regional Forester Louis Volk by letter dated July 2, 1996. (AR 46, 47)

VI. Latir Wilderness The appellant states that the adverse decision of the local Ranger is not in accord with Wilderness designation of the Latir Peaks area. and is based upon an insufficient analysis of bighorn sheep.

Appellants contend that because livestock activities were established in an area at the time Congress determined the area suitable for Wilderness, they should be allowed to continue.

Response: The decision by District Ranger to deny a grazing application to graze sheep instead of cattle on the Rito Segundo Allotment is in accord with the Wilderness designation of the Latir Peaks Area in 1980.

Prior to the 1996 NEPA decision, Livestock (sheep and cattle) were permitted to graze the Latir Peaks Wilderness area. After the 1996 NEPA decision, livestock (cattle) are still permitted to graze within the Latir Peaks Wilderness Area. This is in accord with the Wilderness designation to allow livestock grazing in wilderness areas.

The class of livestock permitted to graze in the Latir Peaks Wilderness was changed from sheep to cattle in the 1996 NEPA document which analyzed and disclosed the effects of this conversion in the Decision Notice and Finding of No Significant Impact signed by Forest Supervisor Leonard Lucero dated 4/17/96.

VII. Bighorn Sheep

Appellants contend that there is an insufficient analysis of bighorn sheep in the Latir Peaks (area). Comments in the NEPA document do not say if it is a re-introduction of the 1968 herd that was released.

Response: The Biological Assessment and Evaluation report (AR 43, pg.18) and the Submission and Summary of the Oral Presentation, (AR 49- Enclosure 22, pg.13) contain a summary and history of the bighorn sheep.

The NM Department of Game and Fish, as well as others, do have an interest in re-introduction of bighorn sheep into the Latir Peak Area (AR 21, 31, 39, 41, 43, and 45).

The Biological Assessment and Evaluation report document the history and provide literature citations (AR 43 pg 13, 18, 21-24)

In 1968, approximately 20 bighorn sheep were transplanted from the Pecos Wilderness to the Latir Peaks wilderness. This transplant resulted in a die-off caused by pneumonia attributed to association with domestic sheep (AR 49, enclosure 22, pg 13)

Any new transplant of bighorn sheep into the Latir Peaks Wilderness Area would be a re-introduction of a native wildlife species consistent with the Carson National Forest Plan and NM Department of Game and Fish Comprehensive Plan. That plan has a goal to re-establish bighorn sheep in the Latir Peaks area and to resolve conflicts with domestic sheep grazing prior to restocking. If the livestock class is changed at some date in the future, bighorn sheep could be re-introduced and historic diversity of the area restored for native wildlife species. (AR 31, AR 43)

The 1996 NEPA process analyzed and disclosed the effects of a change in class of livestock from sheep to cattle and the bighorn sheep re-introduction.

Decision

After a detailed review of the appeal record, I find that the District Ranger acted within his authority to deny the FY 2000 grazing application for 115 head of sheep and a temporary conversion of 4 head of permitted cattle to 100 head of sheep on the Rito Segundo Allotment.

The Forest Service actions are in accordance with National Forest Policy, including the 1030 Objective and Policy, dated March 6, 1972. The District Ranger and Forest Supervisor made extra effort to keep you informed and presented viable alternatives to continue traditional livestock grazing of both sheep and cattle.

I find that the term grazing permit was held as an individual permit, not a Cisneros family permit.

Regarding the 1996 NEPA process, there was no adverse action taken against permittee Mr. Floyd Cisneros (dec). Notice of 36 CFR 215 and 251 were given orally and in writing. The term grazing permit retained the same livestock numbers, class and season of use.

As the applicant for the new term grazing permit holder Mr. Porfirio Cisneros has now exercised his right to appeal under 36 CFR 251.

I find that the Forest Supervisor conducted a proper and public NEPA process that analyzed and disclosed the effects of his decision. The NEPA process followed all laws, authorities, orders regulations and requirements of an environmental analysis document.

1996 NEPA document analyzed and disclosed the effects of bighorn sheep on the Latir Peaks area. FS Biologists and NM Game and Fish personnel stated that another transplant of bighorn sheep into the area is a re-introduction of a native species.

In conclusion, it is my decision to affirm, in whole, District Ranger Ron Thibedeau's May 24, 2000 decision to deny Mr. Porfirio Cisneros' FY 2000 grazing permit application for 115 head of permitted sheep and the temporary conversion of 4 head of permitted cattle to 100 head of sheep.

Furthermore, this decision allows the District Ranger to implement the 1996 NEPA decision to convert permitted livestock from sheep to cattle on the Rito Segundo Allotment. As the new permit holder, Mr. Porfirio Cisneros may apply for a term grazing permit for 27 head of cattle on the Rito Segundo Allotment of the Questa Ranger District.

This decision concludes the first level appeal determination.

Per 36 CFR 251.87 (c) 2, this decision is subject to a Second Level Appeal.

A Second Level Appeal must be filed with Eleanor S. Towns, Regional Forester, Southwestern Region at 517 Gold Avenue SW, Albuquerque, NM 87102. The appeal must be filed within 15 days of the first level appeal decision.

Sincerely,

STEVE OKAMOTO
Acting Forest Supervisor

Cc: District Ranger, Questa RD
Cc: Regional Forester, SW Region