



United States
Department of
Agriculture

Forest
Service

Southwestern Region 3
Carson National Forest

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File Code: 2230

Date: Aug 4, 2003

Mr. Sebedeo Chacon
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Registered Mail

Dear Mr. Chacon:

I received your letter dated May 15, 2003 in which you present a 36 CFR 251 Appeal of Acting District Ranger John Merino's decision in the amended 2003 Annual Operating Instructions (AOI) for the Alamosa and Jarita Mesa grazing allotments.

Background

Mr. Griego and Mr. Chacon are Presidents of the Jarita Mesa and Alamosa Livestock Association's and graze permitted livestock on the El Rito Ranger District of the Carson National Forest.

The Annual Operating Instructions for the two allotments were issued March 21, 2003 and amended April 8, 2003.

The 45-day appeal period expired May 22, 2003.

The official Notice of Appeal was dated May 15, 2003 and received May 22, 2003.

Therefore, the appeal is timely.

The Forest Supervisor and Acting District Ranger met with the Presidents and permittees on May 9, 2003 at the Carson NF Supervisor's Office and discussed these and other range administration issues.

A Responsive Statement was prepared by Acting District Ranger Travis Moseley on May 27, 2003 and sent to both Presidents of the Alamosa and Jarita Mesa Livestock Associations.

A reply to the Responsive Statement, prepared by Presidents was dated July 11, 2003 received on July 16, 2003.

The Appeal Record closed July 16, 2003 upon receipt of the Reply to the Responsive Statement.

The specific points of appeal are:

- 1.) Ranger Merino's decision to change the language in the Introduction section of the AOI to include the "Authorized Season".
- 2.) Permittees feel this action provides the Forest Service (FS) unilateral power to manipulate the grazing season without permittee involvement. They feel this action will jeopardize the ability of the 36 Permittee Ranching families to manage their cattle.
- 3.) Permittees feel the change to the AOI and billing process seems work intensive and does not reflect good fiscal responsibility.
- 4.) As relief from this decision, permittees request a return to the Instructions of past AOI's.

1) Acting District Ranger John Merino changed the Introduction section of the 2003 AOI to include Authorized Season.

The format of the 2003 Annual Operating Instruction for all allotments on the Carson NF was changed this year to include two columns in a table, labeled Permitted and Authorized Use. This change was done at the direction of the Forest Supervisor for all 76 grazing allotments on the Carson National Forest. It clearly specifies what levels of grazing are Authorized for the 2003 grazing season. Bills for Collection were issued only for the amounts due.



For purposes of clarification the following terms are defined:

Permitted Use is the number, kind, and class of livestock, with a specified season of use, on a particular grazing allotment, that corresponds to the 10 year Term Grazing Permit.

Authorized Use is the number, kind and class of livestock that are approved on an annual basis by the District Ranger. Authorized use may be less than Permitted use due to changes in resource conditions such as drought.

Ranger John Merino was the Acting District Ranger on the El Rito Ranger District for a 120 day detail, attended the annual permittee meetings, prepared and approved the 2003 AOI's. Ranger Merino considered the 2002 monitoring results, drought forecasts, and resource conditions. He made his best estimate of livestock numbers and season of use for the 2003 grazing season and presented them at the Annual Permittee meetings in late February, 2003.

Documentation of the February 19, 2003 Annual Permittee Meeting for Jarita Mesa states that permittees did not oppose delayed entry and reduced numbers, but were opposed to and disagreed with the Authorized Use column on the AOI reflecting the change in date and number of livestock. Permittees are afraid that the FS will continue to use the delayed entry date along with the reduction in livestock numbers instead of what the term permit reads

Documentation of the February 23, 2003 Annual Permittee Meeting for the Alamosa allotments states that Ranger Merino presented a draft AOI with delayed entry and reduction in numbers based on actual field observations and existing drought conditions and data. A spokesman for the Alamosa allotment continually interrupted and expressed his dislike of the Forest Service. Permittees advised Ranger Merino that they wanted the AOI and billing to remain as it was in the past, and would possibly follow up with an appeal if the billing was not changed to the way it had been last year.

The major concern of permittees is that the Forest Service will continue to use the delayed entry date and reduced livestock numbers in future years and make these changes permanent. In response to permittees concerns, Ranger Merino added a statement to the 2003 AOI which reads: “ **In addition, the authorized number of livestock and delayed entry date will not change the current term grazing permit, permitted livestock number, or the permitted season dates. As mentioned previously, the authorized livestock number and delayed entry date is based on drought and range conditions.**”

This statement was intended to clarify that annual Authorized Use levels, based on resource conditions, does not permanently change the Permitted number and season of use on the Term Grazing Permit. Any permit modification that permanently changes Permitted use numbers and season can only be done thru the National Environmental Policy Act (NEPA) process. The two allotments are scheduled for NEPA environmental analysis, Jarita Mesa in 2006, and Alamosa in 2007. The NEPA process provides opportunity for public input into Permitted livestock numbers and season of use levels.

District Ranger Merino considered all available information, inspected the allotment, and listened to permittee concerns. He issued decisions in the final AOI's that included a table with both Permitted and Authorized Use. Bills for Collection were issued based on Authorized Use.

Acting District Ranger Travis Moseley followed Ranger Merino. In the Responsive Statement to the appeal, Ranger Moseley states that based on 2002 range inspections and monitoring, it was apparent that the two allotments could not sustain full Permitted numbers and season of use. He supported Ranger Merino's decision on livestock numbers and season of use needed to manage within grazing utilization standards.

2.) The change to use “Authorized Season” provides the Forest Service unilateral power to manipulate the grazing season without permittee involvement.

Forest Service policy does give the District Ranger authority to make annual adjustments in grazing use to avoid damage to the resources.

Under Part 2 – General Terms and Conditions of the Term Grazing Permit;

Item 8 (b) states “The number, kind and class of livestock, period of use, and grazing allotment specified in the permit may be modified when determined by the Forest Officer to be needed for resource protection.”

Item 8(c) states” When in the judgement of the Forest officer in charge the forage is not ready to be grazed at the beginning of the grazing season, the permittee, upon request of the Forest Officer, will defer placing livestock on the grazing allotment to avoid damage to the resources. The permittee will remove livestock before expiration of the designated grazing season upon request of the Forest Officer when it is apparent that further grazing will damage the resources.

Item 8-d specifies: “ the permittee will allow only the numbers, kind, and class of livestock on the allotment during the period specified in Part 1 hereof (Permitted Use), or the annual Bill for Collection, including any modifications made as provided in Section 8(c).

I find that the Acting District Rangers acted within their authority to conduct the Annual Permittee meetings, prepare Draft and Final Annual Operating Instructions and issue Bills for Collection for Authorized Use levels.

Beginning with the Annual Permittee meetings in February, 2003, permittees have voiced their opposition and disagreement with Authorized Use levels shown in the Annual Operating Instructions.

The record shows the Rangers and Range Staff’s made numerous attempts, verbally and written, to discuss and explain the rationale for format changes to the AOI. Permittees continued to oppose and disagree with these changes and exercised their 36 CFR 251 appeal rights.

The District Ranger made decisions to continue grazing at conservative levels to meet legal requirements and provide available forage for the 36 dependent ranching families on the two allotments.

3.) Permittees feel the change to the AOI and billing (process) seem work intensive and does not reflect good fiscal management.

The annual sequence of events in Range Administration is to hold an Annual Meeting in January-February, prepare written Annual Operating Instructions, and mail Bills for Collection to permittees 30 days prior to the May 1 entry date.

Per the 2003 Rangeland Management Action Plan the Forest Supervisor directed the District Rangers to consult with permittees, provide them the best information available, and inform them, early and often.

Due to extended drought conditions since 1996, this sequence of events were delayed, later and later each year, which caused internal and external fiscal management situations. Permittees did not know what livestock numbers and season of use would be authorized until late April-May, which created uncertainty, financial hardships and limited available options. Internally, because bills were issued late, some permittees paid grazing fees late, paid the wrong amounts, and entered the allotment on the wrong dates. This created unacceptable range administration and fiscal situations which have been corrected.

In the 2003 grazing season, early dialogue did occur, beginning with the February, 2003 Annual Permittee meetings, and continued with amendments to the AOI’s in April, 2003. Permittees on these two allotments knew early on what Authorized Use levels would be and Bills for Collection were then issued on these amounts.

The FS is required to practice sound fiscal management and maintain fiscal integrity. The 2003 grazing season brought the annual sequence of events in Range Administration back into their proper sequence. Annual meetings were held earlier and Bills for Collection matched Authorized Use levels shown in the AOI. This is good fiscal management.

4.) Permittees request a return to the AOI instructions of past years.

The 2003 Rangeland Management Action plan was partly prepared in response to Carson and Santa Fe National Forest permittee concerns to keep them informed, avoid surprises and provide time to consider other options prior to the grazing season.

Per direction from the Forest Supervisor , the AOI format was changed on all 76 grazing allotments of the Carson National Forest. The AOI format provides a consistent outline and clearly displays both Permitted and Authorized use levels. The Authorized Use levels reflect conservative grazing levels and responsible stewardship of the rangeland resource.

In the 2003 grazing season, only 49% of Permitted numbers and season of use were Authorized on the Carson National Forest, due to the effects of extended drought and resource conditions.

If the Carson NF had prepared AOI's and Bills for Collection for 100% of the Permitted Numbers and Season of Use, it would have resulted in permittees planning for and expecting to run more livestock than authorized.

Permittees, including those on the Jarita Mesa and Alamosa allotments would have paid excess grazing fees which were not authorized, and tied up unnecessary personal and business finances for almost a full year.

In these difficult drought years, the District Rangers have the responsibility and authority to balance the needs of permittees and the long term sustainability of the rangeland resource.

Decision

Based on the appeal record, applicable laws, regulations, orders, policies and procedures, It is my decision to affirm the Acting District Rangers decision.

I find that Acting District Rangers Merino and Moseley acted within their designated authority to make changes in the Annual Operating Instructions and show both Permitted and Authorized use levels.

Stating Authorized Use levels in the Annual Operating Instructions, and issuing matching Bills for Collection does reflect good fiscal management. Permittees are only billed for livestock numbers and season authorized on an annual basis by the District Rangers.

The record shows District Rangers and Range Staff's made numerous attempts, verbally and written, to discuss and explain the rationale for format changes to the AOI, with permittees from the two allotments.

District Ranger and Range specialists are directed to continue to consult with, and inform permittees in a professional, courteous manner and expect the same in return

The extended drought we have experienced since 1996 is having a significant effect on rangelands and available forage. Permittees have a valid concern that grazing use levels may be reduced in the future. Drought and resource conditions do not support full Permitted numbers and season of use.

The District Ranger's made decisions to continue grazing at conservative levels to meet legal requirements and provide available forage for the 36 dependent ranching families on the two allotments.

This concludes the first level of 36 CFR 251 Appeal.

Per 36 CFR 251.87(c) District Ranger decisions are subject to a second level of review. If you so desire, a second level appeal must be filed, in writing, within 15 days of the first level appeal decision, with the Regional Forester, Southwestern Region, 333 Broadway SE, Albuquerque, NM 87102

Sincerely,

MARTIN D. CHAVEZ, JR.
Forest Supervisor

Cc: Senator Pete Domenici
Cc: Senator Jeff Bingaman

Cc: U.S. Representative Tom Udall
Cc: Regional Forester, Southwest Region