



United States  
Department of  
Agriculture

Forest  
Service

Gila National Forest  
505-388-8201

3005 E. Camino del Bosque  
Silver City, NM 88061-7863  
FAX: 505-388-8204  
TDD: 505-388-8489

---

File Code: 1570

Date: May 5, 2000

James S. and Jeanette S. Heap  
Skousen Ranch Inc.  
P.O. Box 990  
St. Johns, AZ 85936

CERTIFIED MAIL - RRR

RE: Appeal James and Jeanette Heap (Skousen Ranch) (2000-03-06-0001-251)

Dear Mr. and Mrs. Heap:

This is my review decision of the appeal you filed pertaining to the Decision Notice and Finding of No Significant Impact for the Gallo Mountain Allotment, issued by District Ranger, Jerry Hibbetts, Quemado Ranger District, on December 13, 1999. My review of this appeal has been conducted pursuant to and in accordance with 36 CFR 251, Subpart C.

### **BACKGROUND**

On December 18, 1996, a letter from Jerry Hibbetts was sent to Mr. Heap to explain the process, by which term grazing permits were being reissued, this letter also attempted to schedule a meeting with Mr. Heap. (Doc. 3.0)

On January 16, 1997, a meeting was held with Mr. Heap to provide an overview of the NEPA process and to initiate scoping for the Gallo Mountain Allotment. (Doc. 5.0)

On November 12, 1998, a Draft Environmental Assessment for the Gallo Mountain Allotment was released to the public, and a copy was sent to Mr. Heap. (Doc. 69.0)

On May 28, 1999, and June 8, 1999, discussions between John Pierson, Jerry Hibbetts, and Mr. Heap took place in which the reissuance of the term grazing permit for the Gallo Mountain Allotment, and Mr. Heap's concerns dealing with the NEPA analysis were discussed. A copy of the 215 and 251 appeal regulations and a copy of the Gallo Mountain Capacity Estimation were sent to Mr. Heap on June 10, 1999. (Doc. 78.0)

On December 13, 1999, Jerry Hibbetts, District Ranger, Quemado Ranger District, signed a Decision Notice and Finding of No Significant Impact for the Gallo Mountain Allotment Grazing Analysis. (Doc. 98.0)

On January 25, 2000, a copy of the 251 and 215 appeal regulations were faxed to Mr. Heap. (Doc. 106.0)



On February 16, 2000, a letter from Mr. Heap, appealing Jerry Hibbetts' December 13<sup>th</sup> decision was received in the Regional Office in Albuquerque. (Doc. 114.1)

On February 22, 2000, a letter was sent to Mr. Heap, which acknowledged receipt of his appeal, and scheduled an oral presentation. (Doc. 116.0)

On March 3, 2000, an oral presentation meeting was held at the Forest Supervisor's Office in Silver City, New Mexico.

On March 9, 2000, Report: Social/Economic Concerns (Heap) (Doc. 121.0), Report: Stocking Records Summary (30 year) (Doc.122.0), and Report: Changes made to EA to respond to Heap Social/Economic concerns (Doc. 123.0) were added to the project record.

On March 10, 2000, Responsive Statement which included copies of grazing use records and a copy of the changes made to the EA were sent to Mr. and Mrs. Heap. (Doc. 124.0)

### **POINTS OF APPEAL**

My review of this appeal has been confined to the appeal record and applicable laws, regulations, orders, policies, and procedures, as provided for in 36 CFR 251.99 (a). During my review, I have considered the substantive points raised in the appeal and in the District Ranger's responsive statement of March 10, 2000. In order to clearly understand the points made by appellant and the District Ranger, the District Ranger's original decision and associated environmental assessment (EA) and project record have been incorporated into the appeal record and portions of that record have been reviewed.

**Issue 1:** Reduction of cattle numbers is based upon previous thirty years' grazing numbers. Though heavy importance is being placed on the actual past numbers grazed when making the decision for current grazing numbers, there is insufficient and in many cases NO documentation in USFS files to make an educated decision as to this allotment.

### **Contention:**

- 1) The decision to reduce the term grazing permit numbers was based primarily on the past actual use levels.
- 2) Many of the past actual use records are either incomplete or missing; therefore, an accurate representation of the past use of the allotment cannot be made.

**Response:** In reviewing the record it is clearly evident that professional judgment and the best available data were used to estimate the grazing capacity of the allotment. Actual use data, a 1984 utilization study, and forage/acreage computations were considered and compared in order to establish an estimated capacity for the allotment. (Doc. 41.0)

**Finding:** The Region 3 Allotment Analysis Handbook (FSH 2209.21, R-3) provides broad guidelines for the collection and analysis of resource data to be used in the NEPA planning process. The best available data, sound professional judgment, and approved Forest Service Region 3, methods were used to do the analysis and make the decision for the future management of this allotment.

**Issue 2:** With figures supplied by the NM Department of Game and Fish, District Biologist, Pat Morrison, has contrived the number of elk on the allotment to be higher than those stated by the Game and Fish.

**Contention:**

- 1) There is a difference between the NM Department of Game and Fish and the Forest Service estimate of elk numbers that occur on the Gallo Mountain allotment.
- 2) The Forest Service estimate of elk numbers on the Gallo Mountain Allotment is not accurate and is not based on credible information.

**Response:** In reviewing the procedures used by both the NM Department of Game and Fish and the Forest Service to estimate the number of elk that annually use the Gallo Mountain Allotment, it evident that both agencies are using what they feel is an acceptable method to make such an estimate, but both agencies acknowledge that their estimates are not highly accurate when extrapolated to a defined area such as the Gallo Mountain Allotment. Both agencies are willing to recognize that either agency's estimate has about the same level of credibility. (Doc. 89.0 & 125.0)

**Finding:** The difference between the NM Department of Game and Fish and Forest Service estimates of elk numbers on the Gallo Mountain Allotment is noted and dealt with by the Forest Service in the analysis of this allotment. Both agencies' estimates are taken into consideration when analyzing the possible effect elk may have on the capacity of the allotment. (Doc. 89.0) The best available data, sound professional judgment, and reasonable methods were used to analyze and make a determination of the possible affect elk will have on the future management of this allotment.

**Issue 3:** Untrue, personal and slanderous statements have been made in the original EA about our income and status.

**Contention:**

- 1) Untrue statements concerning the appellant's social and economic status were contained in the original EA.
- 2) The untrue statements contained in the original EA have caused harm to the appellant.

**Response:** The original EA contained statements concerning the ownership of the appellants ranching business, which were later shown to be in error. The information that was found to be incorrect was derived using documentation provided by the appellant when the original Term Grazing Permit was issued in 1988. The use of incorrect information led to an inaccurate depiction of the appellant in the original EA as a relatively large corporation with limited involvement in the local community. While the depiction of the appellant's social and economic status was incorrect in the original EA, it has not been shown that the misrepresentation of the appellant's social and economic status affected the decision made by the Deciding Officer, nor is it clear that the appellant has been harmed by this mistake. As soon as it was brought to the Deciding Officer's attention that the original EA contained incorrect information, efforts were made to correct the inaccuracies. The process used to make and display the corrections in the final EA followed the current Forest Service policy for making such corrections to an EA.

**Findings:** It is unfortunate that incorrect information was used during the analysis and documentation that made up the original EA. It is also unfortunate that statements concerning the appellant's social and economic status were made in the original EA. The social and economic impact on the appellant and local economy needed to be displayed as part of the NEPA analysis, but there is little to be gained by making a judgment as to how the appellant would react based on their social or economic status. The social and economic effects needed to be displayed in the terms of monetary gain or loss, jobs gained or lost, opportunities gained or lost, or in any other measurable terms. To interpret the magnitude of gain or loss should have been left to the appellant, and not been made part of the NEPA analysis.

The record indicates that the incorrect information and misleading statements concerning the appellant's social and economic status were identified and corrected which led to the Deciding Officer using correct and proper information in his decision.

### **APPEAL DECISION**

After a careful and detailed review of the record, I find the District Ranger completed a proper analysis and documentation that has resulted in a decision that is consistent with Forest Service policy and complies with all applicable regulations and laws.

The District Ranger's decision is affirmed and the appellant's request for a new or different decision is denied.

Mr. and Mrs. James S. Heap

5.

Pursuant to 36 CFR 251.87(c), this decision is subject to a second level of review by Regional Forester, Eleanor S. Towns. The appeal for a second level of review must be filed within 15 days from the date of this decision, and must be filed with the Regional Forester, Federal Building, 517 Gold Avenue S.W., Albuquerque, New Mexico 87102.

Sincerely,

*/s/ Nora B. Rasure*

NORA B. RASURE  
Acting Forest Supervisor

cc:  
Quemado RD