

**United States
Department of
Agriculture**

**Forest
Service**

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File Code: 1570

Date: December 1, 1999

NM Cattle Growers Association
c/o Caren Cowan
Executive Secretary
P.O. Box 7517
Albuquerque, NM 87194

CERTIFIED MAIL - RRR

RE: Appeal Jordan Mesa Allotment, Fowler Brothers Cattle Co. (1999-03-06-0004-251).

Dear Ms. Cowan:

This is my review decision on the appeal you filed on behalf of the Fowler Cattle Company pertaining to District Ranger Annette Chavez's Decision Notice and Finding of No Significant Impact and Environmental Assessment for the Jordan Mesa grazing allotment, Wilderness Ranger District. My review of this appeal has been conducted pursuant to and in accordance with 36 CFR 251.80. My responses are in the same order as your appeal points and the Deciding Officer's Responsive Statement. Where appropriate, additional comments to the Deciding Officer's response will be made as well as addressing the issues you have raised.

BACKGROUND

The background information provided by the Deciding Officer is incorporated in this review by reference. This information consisted of correspondence from February 15, 1994 through June 11, 1999.

In addition to this information, the following correspondence and actions were taken.

On June 14, 1999, District Ranger Annette Chavez submitted a letter on appeal disposition meeting with permittee Fowler Cattle Company.

On July 23, 1999, Reviewing Officer Camarena closed the record.

On August 23, 1999, Supervisor Camarena was informed that Caren Cowan had not received the Responsive Statement issued by Deciding Officer Annette Chavez. The Responsive Statement was mailed on August 20, and an additional 20 days was provided for the Appellant to respond.

On September 8, 1999, Caren Cowan requested an extension of an additional 30 days to the 20 day response period.

On September 14, 1999, Supervisor Camarena granted the Appellant the 30 day extension. He informed the Appellant to submit their comments no later than September 24, 1999.

On October 7, 1999, Supervisor Camarena informed Caren Cowan that he had received their comments to District Ranger Chavez's Responsive Statement and the appeal record was closed. A decision would be issued by November 8, 1999.

On November 10, 1999, Supervisor Camarena informed Caren Cowan that the issuance of the review decision was extended to December 6, 1999.

FINDINGS

The following is my evaluation and response to each of the subparts within each of the five major issues:

Subpart I Facts.

Due to the lack of sufficient information as to the economic viability of the permittee, no comment will be made.

Subpart II Standard of Review.

No comment; this section calls for conclusion of law. In addition, contrary to the Appellant's complaint, the decision was issued by Acting District Ranger Annette Chavez and not the Forest Supervisor.

Subpart III Grounds for Appeal.

A. NEPA Analysis is Not Required For Reissuance of Term Grazing Permits .

Contention: Appellant contends the EA for the Jordan Mesa Allotment grazing permit is another example of the Forest Service unnecessarily subjecting the reissuance of expiring term grazing permits to NEPA analysis. Reissuance of grazing permits which merely continue a previously authorized activity or action does not require additional NEPA analysis. To subject grazing that is already authorized by the Forest Plan to NEPA analysis simply because a grazing permit is up for renewal is not only inconsistent with prevailing law, but wastes the agency's time and taxpayer's money.

Response: I concur with the Deciding Officer's Responsive Statement on this issue. This action was consistent with present laws, regulations, and directives.

The District Ranger is affirmed on this issue.

B. Assuming *Arguendo* That NEPA is Necessary, The Decision And The EA Violate NEPA and Forest Service Procedure.

1. The "No action" alternative is not a "reasonable alternative" under NEPA when misconstrued to mean "no grazing".

Contention: The Appellant asserts that only "real" environmental "issues" and "reasonable alternatives" to proposed actions must be considered as per CEQ regulations when implementing NEPA. Alternatives that cannot be feasibly considered or implemented are not "real issues" or "reasonable alternatives" and, therefore, violate NEPA. The Appellant refers to the 1986 Forest Plan as identifying the "no action" alternative as continuing current resource management. Therefore, the "no action" alternative for this EA should have analyzed the existing grazing management regime, not a "no grazing" alternative. Appellant contends an activity already permitted by the Forest Plan (grazing) should be consistent with the guidance provided by the plan and "eliminating all grazing is not a reasonable alternative". In addition, the "no action/no grazing" alternative is inappropriate for consideration because livestock grazing cannot be legally eliminated from this allotment as it would violate the existing Forest Plan.

Response: I concur with the Deciding Officer's Responsive Statement on this issue.

The District Ranger is affirmed on this issue.

2. The Forest Service violated the Intergovernmental Cooperation Act, NEPA and NFMA by denying Catron County its lawful right of participation.

Contention: The Appellant asserts that the Forest Service is mandated by law and regulations (40 CFR 1506.2) if a local government, in this case Catron County, has environmental ordinances that require NEPA-like environmental analyses for a particular action. The federal agency preparing an EA must cooperate and coordinate many of the studies, hearings, and planning processes with the local government. This includes the joint preparation of an EA and in addition, if the local government's requirements do not conflict with the NEPA, the federal agency "shall cooperate in fulfilling these [county] requirements." The Appellant further states that "nowhere does the Jordan Mesa EA discuss any consideration of the Catron County Land Use Plan or how the Forest Service complied with the Memorandum of Understanding between Catron County and itself. The Appellant contends that the EA simply concludes a local land use plan exists and ignores its contents which is a violation of NEPA. The Forest Service is to cooperate with counties in their environmental planning efforts and under the ICA, if the federal agency believes that there are inconsistencies between local ordinances and federal law, the federal agency must note the inconsistencies in the EA. The Forest Service failed to do so by failing to specifically consider individual provisions of the Catron County Land Use Plan. Specifically, the Jordan Mesa EA lacked any discussion supporting a Forest Service decision to act in disharmony with any land use provisions.

Response: I concur with the Deciding Officer's Responsive Statement on this issue.

The District Ranger is affirmed on this issue.

3. The Forest Service failed to adequately consider economic, environmental, social or cumulative impacts in the EA.

(i) Failure to adequately consider economic impacts.

Contention: The Appellant asserts that "the EA fails to adequately consider either the cumulative economic impacts that the proposed action will have on the Permittee, Catron County and the surrounding region". The Forest Service failed to compare the estimated impacts of the five EA alternatives to the existing management situation. The EA failed to calculate the social and economic impacts over the ten year term of the grazing permit period. Appellant further claims "the EA ignores the effects of terms and conditions attached to the grazing permit, such as forage utilization standards, wildlife species management terms/conditions, and future monitoring". In sum, the EA's treatment of the impacts of the alternatives on Fowler and family is totally insufficient, no personal or financial information of any type was considered.

Response: I concur with the Deciding Officer's Responsive Statement on this issue.

The District Ranger is affirmed on this issue.

(ii) Failure to adequately consider environmental impacts.

Contention: The Appellant asserts that the EA fails to consider the cumulative and connected environmental and physical impacts of the decision by failing to consider the possibility that reduction of livestock numbers will cause fuel loading which could lead to catastrophic fires with severe impacts on wildlife, fish, and forest ecosystems. In addition, the EA fails to adequately analyze the impacts of the loss of the range and water improvement currently maintained by the permittee.

Response: The cumulative effects upon fuels and fire management were found in the EA (Project Record 04-04, III-41). In regards to maintenance responsibility of range improvements, these are identified and listed in the terms and conditions of the Term Grazing Permit Parts 2 and 3. It is speculative at this time to assume the permittee will waive the Term Grazing Permit back to the government, thusly, relinquishing all maintenance associated with the existing improvements.

The District Ranger is affirmed on this issue.

(iii) Failure to adequately consider social impacts.

Contention: The Appellant claims "the Forest Service projects an increase in the permittee's income and makes the erroneous assumption that Fowlers' economic well-being will be furthered". In addition, the appellant claims "the cumulative effects on surrounding communities are equally erroneous.

Response: I concur with the Deciding Officer's Responsive Statement on this issue.

The District Ranger is affirmed on this issue.

(iv) Failure to adequately consider direct and indirect effects of the proposed action.

Contention: The Appellant asserts that the Forest Service failed to adequately consider the direct and indirect effects of the selected alternative in the Jordan Mesa EA by failing to discuss: (1) whether possible future permittees would want to operate under the selected alternative; (2) the effects the selected alternative will have on private right, including private property and water rights; and (3) the effects upon the local custom and culture as livestock grazing is removed for other uses.

Response: I concur with the Deciding Officer's Responsive Statement on this issue.

The District Ranger is affirmed on this issue.

(v) Failure to adequately consider cumulative effects of the proposed action.

Contention: The Jordan Mesa EA and Decision fails to discuss impacts from decisions on other allotments within the Gila National Forest. Twenty-eight other allotments are subject to Forest Service review. Accordingly, the economic, social and environmental impact discussion should analyze overall impacts from the 28 allotment review. For the reasons discussed in (i) through (v) supra, the Forest Service failed to adequately consider economic, environmental, social, indirect or cumulative impacts in the EA.

Response: I concur with the Deciding Officer's Responsive Statement on this issue.

The District Ranger is affirmed on this issue.

4. The EA fails to adequately consider opportunities for mitigation.

Contention: The Appellants assert the EA fails to discuss mitigation of the severe impacts on the permittee, his family, as well as local citizens. Further, the Appellant states, "the Forest Service could have offered additional grazing to the permittee elsewhere and/or increase livestock numbers while accomplishing better distribution through the use of various livestock management techniques.

Response: I concur with the Deciding Officer's Responsive Statement on this issue.

The District Ranger is affirmed on this issue.

5. The EA violates NEPA because it failed to analyze a required alternative.

Contention: The Appellant contends that "the Forest Service is required to consider a "No Action" alternative that would implement the existing management regime. The Appellant further claims the EA failed to consider the current management situation as an alternative.

Response: I concur with the Deciding Officer's Responsive Statement on this issue.

The District Ranger is affirmed on this issue.

6. The EA failed to contain a required civil rights impact analysis.

Contention: The Appellant contends that the Forest Service Handbook mandates the agency complete a Civil Rights Impact Analysis ("CRIA") or Civil Rights Impact Statement ("CRIS") describing the range of actions having potential civil rights impact on local citizens and federal employees. The Appellant further states "that responsible Forest Service officers shall examine proposed "major" policy actions for civil rights implications. A major policy action is one that affects 10 or more people.

Further, the Appellant asserts "if the Forest Service insists that the reissuance of a term grazing permit on this allotment is an action requiring a NEPA analysis, it must confess that the EA, Decision Notice, and FONSI constitute a "major" policy action for which a civil rights analysis must be completed.

Response: I concur with the Deciding Officer's Responsive Statement on this issue.

The District Ranger is affirmed on this issue.

7. The NEPA process followed in the EA set up a pre-determined outcome.

Contention: The Appellant alleges "the NEPA scoping process focused on improving range and riparian conditions on this allotment, and by focusing on this primary goal, the Forest Service put forth a preferred alternative with one goal in mind. Appellant claims "the Forest Service dismissed as non-issues important public concerns such as the cumulative impacts of the NEPA evaluations as applied to other grazing permits throughout the Gila National Forest. The Appellant claims "the Forest Service failed to consider mitigation for social and economic impacts, the management history of neighboring allotments and circumstances faced by Fowler individually". Appellant further claims "the Forest Service abused its discretion by implementing a biased process and the Decision reflects the Forest Service's general goals of reducing and/or eliminating livestock grazing throughout the desert southwest.

Response: I concur with the Deciding Officer's Responsive Statement on this issue.

The District Ranger is affirmed on this issue.

C. The EA, FONSI and Decision Notice Are Not In Accordance With The Gila National Forest Plan.

1. The EA imposes terms and conditions on the allotment that are not authorized by the Forest Plan.

Contention: The Appellant claims "there is no definition of what constitutes upland habitat from lowland habitat; under the utilization standards proposed in Alternative C, the permittee is faced with a vague and arbitrary limit; the arbitrary percentages established as utilization levels for various habitats are not supported by any scientific data; the EA does not state the biological

or scientific basis for the utilization standards, nor are the utilization standards supported by adequate range trend/condition or production utilization studies; accordingly, the utilization levels conflict with and/or exceed the scope of the Forest Plan".

Response: I concur with the Deciding Officer's Responsive Statement on this issue.

The District Ranger is affirmed on this issue.

2. Conflict with the Multiple-Use Mission.

Contention: The Appellant claims "the Forest Service's proposal to review twenty-eight allotments in an overall effort to reduce or eliminate livestock grazing in the desert southwest is contrary to the very mission set forth in the Gila Forest Plan; the goal of putting recreational and environmental interest ahead of livestock grazing also violates the principle of multiple use as set forth in the Multiple Use Sustained Yield Act.

Response: The requirement for conducting NEPA analysis for the issuance of a Term Grazing Permit is discussed in response to A.

In reviewing the EA and the project record, I could not find any evidence that indicated the grazing analysis conducted on the Gila National Forest is aimed at reducing or eliminating livestock grazing in the desert southwest nor was there a goal established to place recreational and environmental interest ahead of livestock grazing. Contrary to the Appellant's belief, stocking levels are being set at a carrying capacity within the capability of the resources which will sustain or improve these conditions.

All management practices and activities of the selected "Alternative C" are consistent with the management direction, including standards and guidelines, in the final Land and Resource Management Plan for the Gila National Forest (September, 1986), as amended, and its provisions, which were developed in accordance with the National Forest Management Act of 1976 (16 USC 1604(i) and 36 CFR 219.10(e)). Additionally, the management practices and activities of Alternative C are consistent with the Multiple Use Sustained Yield Act.

The District Ranger is affirmed on this issue.

D. Practical And Scientific Reasons Why The EA And Decision Are Inadequate.

1. Range capacity calculation using GIS and ARC/Info (Livestock Allocation Model) is incorrect.

Contention: The Appellant claims "the Livestock Allocation Model used by the Forest Service to determine the carrying capacity of the Jordan Mesa Allotment is totally inadequate". Appellant alleges several problems with the model. Appellant states "the model should only be used as a starting point and not the final determination. Model results should be combined with current management, on the ground survey and range experience". Appellant claims "use of the Model as an "end all" method to determine allotment carrying capacity is arbitrary and capricious; use of the model devoid of any on-the-ground studies is scientifically unsound".

Response: In review of the record, a range condition and trend analysis (22-03), a vegetative effects analysis (22-06), a forage allocation analysis (22-07), a production utilization study (22-12), production validation (22-14), and actual use records from the 2210 folder during 1989 through 1997 were all utilized in comparison to the Forage Allocation Analysis (22-04 and 22-07) for determining carrying capacity for the allotment. Three methods for developing the carrying capacity were described in Grazing Capacity Comparison (22-13).

The Appellant is incorrect in asserting the procedure was used alone, lacked current management, on-the-ground survey and range experience when using the Livestock Allocation Model for determining the carrying capacity for the Jordan Mesa Allotment.

The District Ranger is affirmed on this issue.

2. The EA provides no scientific support for its utilization and carrying capacity findings.

Contention: The Forest Service determined the allowable use based on vegetative response, wildlife needs, and other factors including threatened and endangered species. The Forest Service claims to have considered other factors, grazing intensity, season of use, etc. There is no consideration of livestock management practices or the impacts of grazing wildlife. There is no explanation of how different factors, studies, and guidelines were applied, weighted or considered in assigning a final utilization value. There is no explanation concerning the terms, conditions, assumptions or parameters used in reaching final utilization rates. The Forest Service failed to include production and capacity calculations in the EA.

Response: The Forest Plan and subsequent amendment provide general standards and guidelines with specific utilization standards identified (See response to Item C-1 and D-1 regarding establishment of allowable utilization levels). Contrary to the Appellant's assertion regarding reaching final utilization rates, the record indicates these were developed by comparison of information contained in the record.

A proper evaluation of grazing capacity was made and allowable utilization levels comply with Forest Plan standards and guidelines which are supported by recent scientific findings, and documented in the project record.

The District Ranger is affirmed on this issue.

3. The EA inadequately discussed the impacts of grazing by elk and other grazing wildlife.

Contention: The Appellant claims "the permittee will be placed in an impossible position, if elk and other grazing wildlife overutilize riparian areas; the permittee's livestock must have access to riparian areas to drink water, hence, the permittee cannot exclude his cattle from water; yet, because of elk and wildlife use, after the three year monitoring, if the Forest Service decides riparian use must be limited, the Forest will only reduce livestock; such reductions may occur despite ideal livestock management and through absolutely no fault of the permittee".

The Appellant claims "the agency acted arbitrarily and capriciously by failing to consider the possibility that allotment conditions are attributable to elk".

The Appellant claims the Forest Service should conduct studies to determine the current size of the elk herd, the population of other types of grazing wildlife, the current trend and forecast of future populations, types of plants used by wildlife, the areas within the Jordan Mesa Allotment where grazing wildlife is most abundant, and a projection of overall wildlife utilization".

Response: In review of the record, elk and other grazing wildlife use on the allotment were analyzed in the EA (Project Record 04-04, 21-03, 22-06, 23-02, and 23-03).

The New Mexico Department of Game and Fish has the responsibility for managing elk population.

With regard to the Appellant's claim that the Forest Service should conduct wildlife studies, this issue is beyond the scope of the analysis. Wildlife studies were not part of the analysis.

The EA and accompanying specialist reports adequately discussed the impacts of grazing by elk and other grazing wildlife.

The District Ranger is affirmed on this issue.

4. The EA's "economic" analysis is inadequate because it relies on regional averages instead of actual, readily available data.

Contention: The Appellant asserts that since the Forest Service decided to analyze economic impacts to Catron County as part of its NEPA analysis, the EA should utilize actual, verifiable data instead of regional averages. The Forest Service should have obtained allotment specific data from the permittee to analyze the actual impact Alternative C would have on Fowler Cattle Company. The agency's failure to gather input from the permittee resulted in a violation to 40 CFR 1508.9(a)(2) by failing to determine and analyze the economic impacts on Fowler Cattle Company.

Response: I concur with the Deciding Officer's Responsive Statement on this issue.

The District Ranger is affirmed on this issue.

5. The EA's analysis on soils and watershed is without current data.

Contention: The Appellant cites the Water Quality and Pollution Control in New Mexico, Water Quality Control Commission, 1994 (305b list) report, and states that the document is outdated. The Appellant claims "there is no indication that the Forest Service ever performed an allotment specific study or analysis; additionally, the agency fails to explain the basic methodology and principles explaining how it derived its soil related conclusions.

Response: In reviewing the record, the Appellant is incorrect in their assertion. The record contains specialist reports which were summarized in the EA (Project Record 04-04). The

specialist reports, prepared by journeymen soil scientist and range conservationist, were detailed watershed and range trend/condition analysis, from which these summaries were derived. (21-03 and 22-03).

Those water bodies included in the 1994 [305 (B)] list were considered in the analysis; however, the 1994 list was published in the fall of 1998. For the Gila National Forest, there were no significant changes.

Current vegetation/soil condition trend information was collected on the Jordan Mesa allotment in 1995/96.

The best available data pertaining to vegetative and soil condition and trend information was used in the analysis. This information is adequate for determining soil condition and trend.

The District Ranger is affirmed on this issue.

6. The agency failed to consult and cooperate with the permittee and Catron County.

Contention: The Forest Service failed to follow the federal law (FLPMA, NFMA, and NEPA), and agency regulations that require federal agencies to consult and cooperate with the permittee and Catron County officials.

Response: I concur with the Deciding Officer's Responsive Statement on this issue.

The District Ranger is affirmed on this issue.

7. The agency EA improperly relies on several wildlife management documents.

Contention: The Appellant claims, "the EA relies on a host of agency methodology papers, interim directives, and studies concerning wildlife species management, habitat needs, survey methods and population estimates and analysis; the Appellant cites the Mexican Spotted Owl recovery plan, Guidance Criteria for Determining Effects of Issuing Term Grazing Permits, and Northern Goshawk recommendations, EA at III-42". The Appellant claims the use of these documents is a violation of federal law and regulations.

Response: The Jordan Mesa EA did not reference the documents identified in this appeal point. The identified section in the Jordan Mesa EA (III-42) (Project Record 04-04) pertains to cumulative effects within this document.

The District Ranger is affirmed in this issue.

8. The Forest Service used improper vegetative survey techniques.

Contention: The Appellant claims "the agency estimated vegetation condition and forage production of this allotment by using a combination of regression equations, aerial photographs or a forest-wide computerized information system; the forest failed to conduct any on the ground vegetation studies; the agency acted arbitrarily and capriciously in relying on aerial photos,

computerized information systems/data bases, and outdated planning guides in arriving at vegetation findings".

Response: See response to D-1. The record indicates the District Ranger utilized the best information available and that information gathered on the ground was utilized.

The District Ranger is affirmed on this issue.

9. The EA failed to analyze and consider range improvement techniques to expand or fully realize actual allotment capacity.

Contention: The Gila Forest Plan mandates the development and preparation of AMPs in careful and considered consultation, cooperation and coordination with parties involved, including the Permittee. In developing an AMP the permittee traditionally proposes and/or requests the construction of range improvements to increase allotment capacity and enhance range quality. The AMP process was ignored in favor of a broad cut. The EA ignored range improvement techniques and AMP revision in favor of direct herd reductions.

Response: The Appellant is correct in stating the Gila Forest Plan mandates the development and preparation of AMPs in careful and considered consultation, cooperation and coordination with parties involved, including the permittee. In addition, direction for this action is provided for in FLPMA Section 402(d) and PRIA Section 8. Further direction is provided for in FSM 2210.31(3) and 2210.32.

The construction of new improvements were not identified during review of the significant issues in the EA (II-9-11). Regarding the accomplishing of better livestock distribution by various techniques, such as salting, herding, and fence construction, these were identified in the alternatives. No other range improvement techniques were proposed by the permittee. Regarding consultation and coordination with other parties, including the permittee, refer to response D-6.

At present, the Decision Notice is under appeal and the preparation of an AMP, based on the EA, is not ripe. Once the appeal has reached resolution, the District Ranger will prepare an AMP in careful and considered consultation, cooperation and coordination with the permittee.

The District Ranger is affirmed on this issue.

10. Reissuance of a grazing permit is not discretionary.

Contention: Appellant claims "the agency's suggestion that reissuance of a grazing permit is a matter subject to the agency's discretion is unfounded; a grazing permit and a grazing preference are property interests protected by the United States Constitution".

Response: See response under Appeal Item A regarding reissuance of grazing permits. With regard to property right, Forest Service Policy (FSM 2230.3(2)) states, "Grazing permits authorize livestock on National Forest System lands. The holding of such permits is a privilege, not a property right. Permit holders may not assign or transfer grazing privileges in whole or in

part." This is supported in 36 CFR Part 222.3 a and b where it is stated: "a) Unless otherwise specified by the Chief, Forest Service, all grazing and livestock use on National Forest System lands and on other lands under Forest Service control must be authorized by a grazing or livestock use permit; and b) Grazing permits and livestock use permits convey no right, title, or interest held by the United States in any lands or resources."

The Forest Service need not reauthorize the same type/level/intensity of grazing or any grazing.

The District Ranger is affirmed on this issue.

11. A regulatory impact analysis should have been completed prior to decision.

Contention: Appellant asserts, "the Decision for the Jordan Mesa Allotment is a significant regulatory action. Additionally, the Decision has a significant impact on a substantial number of small entities under the Regulatory Flexibility Act (RFA [5 U.S.C. 6 05 et seq.]). Therefore, a regulatory impact analysis should have been prepared pursuant to Executive Order 12,866 and the RFA."

Response: The Appellant is incorrect in this assertion. The Regulatory Flexibility Act, Executive Order 12,866 does not apply to NEPA decisions. The Act refers to new policy and direction affecting small businesses. This decision makes no new policy or sets no new direction. It is for the issuance and administration of a term grazing permit authorizing livestock grazing on National Forest lands according to existing laws, policy and direction.

The District Ranger is affirmed on this issue.

E. The Agency EA, Decision, and FONSI are Fundamentally Flawed in Their Entirety.

Contention: The Appellant asserts "As noted in numerous arguments supra, the EA, Decision and FONSI for the Jordan Mesa Allotment are procedurally, legally, scientifically and biologically flawed in almost every respect. Additionally, the EA fails to provide sufficient information and data supporting many of the Forest Service's wholesale conclusions concerning carrying capacity, forage utilization projections, wildlife impacts, vegetation findings, and threatened and endangered species."

Response: Based on the intensive review of the record, I find the District Ranger has followed all the proper procedures in the development and analysis of this project. Response to the Appellant's specific allegations are enclosed throughout this document.

The District Ranger is affirmed on this issue.

IV. REQUEST FOR STAY PENDING FINAL DECISION ON THE MERITS

Contention: The Appellant requests that the Decision Notice be stayed pending a final resolution of this appeal on the merits. The EA, FONSI and Decision Notice demonstrate no critical need (social, environmental or economic) for the Decision to be immediately implemented pending appeal. Should the Decision be implemented pending final resolution of

this appeal, the permittee will suffer irreparable injury as his GFOL loan goes into delinquency and potential foreclosure.

Response: This request for stay was granted. The decision to implement Alternative C will be stayed pending final agency decision on the merits of your appeal. Pending resolution of this appeal, specific livestock management on the Jordan Mesa Allotment will be governed by the permittee's annual operating plan.

V. RESPONSE TO DECIDING OFFICER'S RESPONSIVE STATEMENT

Contention: Where is the environmental justice analysis? Isn't that now required under the National Environmental Policy Act (NEPA)?

Response: The need for environmental justice analysis is not identified in the National Environmental Policy Act, but is identified in Executive Order 12898. The objective of this order is to ensure that environmental effects on minority communities and low-income communities have been analyzed. In reviewing the EA, a Social Analysis was conducted which analyzed the Social Environment; Affected Environment; Race Demographics; Life-styles; Attitudes, Beliefs, and Values; Social Organization; and Environmental Consequences of each alternative within the identified EA's for each of the allotments analyzed on the Forest during 1998 (Project Record 24-09). In addition, an analysis was conducted to estimate the economic impact of cattle grazing on the local economy (Project Record 24-10) and an Economic Specialist Report was prepared (Project Record 24-12).

The NEPA process provides for public comments on the proposed action. No comments were received concerning disproportionate impact on minorities and low income communities.

The District Ranger is affirmed on this issue.

Contention: Doesn't an action of this magnitude call for a full-blown environmental impact statement (EIS)?

Response: The FONSI developed for this decision concludes that an EIS is not required. (Project record 2.0)

The District Ranger is affirmed on this issue.

DECISION

After a detailed review of the records, I find the District Ranger conducted a proper process that resulted in decisions that are consistent with Forest Service policy, regulations and laws.

The District Ranger is affirmed with respect to all appellant contentions.

Pursuant to 36 CFR 251.87(c), my decision is appealable to the Regional Forester. A notice of appeal for a second level review must be submitted to Regional Forester, Federal Building, 517 Gold Avenue S.W., Albuquerque, New Mexico, 87102 within 15 days of this decision.

Sincerely,

/s/Abel M. Camarena

ABEL M. CAMARENA
Reviewing Officer

cc:
Wilderness RD
Fowler Cattle Company
Regional Office