



United States
Department of
Agriculture

Forest
Service

Gila National Forest
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File Code: 1570

Date: January 18, 2001

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Cheyenne, Wyoming 82003-0346

CERTIFIED MAIL 7000-0520-0021-4560-0914
RETURN RECEIPT REQUESTED

Re: Appeal and Request for Stay of the Kelly Allotment Annual Operating Instructions
Decision, Mr. and Mrs. Danny Fryar
Appeal # 01-03-06-0002-A251

Dear Mr. Jensen:

On December 21, 2000, you filed an appeal and request for stay of the November 8, 2000 decision by Larry Raley, Acting Glenwood District Ranger. The appeal, filed on behalf of Danny and Jacqueline Fryar, alleges that the Forest Service improperly authorized construction of fences and has conditioned use of pastures on completion of said fences.

This decision under appeal amended the Annual Operating Instructions (AOI) for the Kelly Allotment requiring the following:

- Livestock are prohibited from entering National Forest lands within the fenced corridor along the San Francisco River.
- Crossing of the river with livestock will be minimized during the year and will be avoided entirely during the period of March 1- May 31. Emergency livestock crossings during the period of March 1- May 31 will be coordinated beforehand through the district.
- Gates which provide access to the river must remain closed to restrict livestock access to the fenced river corridor. These gates must not be left open unless authorized by the District Ranger. As the grazing permittee, it is the Fryar's responsibility to take whatever actions are necessary to insure gates remain closed.
- A grazing schedule for each pasture along with general grazing instructions was imposed to protect specific listed species and/or habitats as recommended by the interagency consultation team as part of the ongoing grazing consultation with the U.S. Fish and Wildlife Service.

The amended AOI also emphasized the importance of excluding cattle from the San Francisco River and stated that if livestock are found in the river administrative action will be taken against the Fryar's grazing permit.



The amended AOI did not authorize or direct that new fences be constructed. It did acknowledge the potential need for new additional fences and assigned the responsibility for fence construction to the permittee: "If there are any locations that have not been fenced, and may provide access to the river, it is imperative to have them fenced if cattle are to continue to use that pasture. Materials are available for constructing additional fences; however, it is the permittee's responsibility to construct any new fences."

As indicated in the amended AOI, district personnel will be monitoring livestock use on the Kelly Allotment along with the permittee. If district personnel and/or the permittee determine that additional fencing is needed to exclude livestock from the river, the Forest Service will develop a proposed action and complete the NEPA process on the fencing proposal. Any decision to construct additional fences will be documented in a Decision Notice or Decision Memo and an appropriate permit modification, and will be subject to appeal.

Since there has been no decision to authorize or direct new fence construction, your appeal of fence construction is premature and the issue is not ripe for administrative review.

Sincerely,

/s/ Marcia R. Andre
MARCIA R. ANDRE
Forest Supervisor

cc:
Mr. and Mrs. Danny Fryar
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Pat Jackson, RO-RF
Glenwood RD