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Forest
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File Code: 1570

Date: August 22, 2003

Mr. Hugh B. McKeen
HC 61, Box 175
Glenwood, NM 88039

CERTIFIED MAIL 7002 2030 0005 8833 8597
RETURN RECEIPT REQUESTED

RE: Appeal 03-03-06-0010-A251

Dear Mr. McKeen:

This letter documents my review and decision of the appeal you filed on November 21, 2002. You have appealed District Ranger Larry Raley's decision, dated October 8, 2002, which cancelled 25% of your Term Grazing Permit numbers. You ask that the 25% reduction in allotment numbers be reinstated, and any false allegations that led to the decision, be stricken from the record. The appeal was filed and has been processed under the provisions of 36 CFR 251, subpart C.

BACKGROUND

On May 15, 2001, District Ranger Larry Raley made a decision to suspend 20% of your Term Permit Numbers for a period of one year (AR 1.0).

On July 27, 2001, the above decision, which suspended 20% of Term Permit numbers, was mediated. The mediated agreement resulted in a decision to suspend 5% of Term Permitted numbers. In addition, the mediated agreement stipulated that if any further violations of the Term Grazing Permit occurred, 5% of the Term Grazing Permit numbers would be cancelled and an additional 20% of Term Permit numbers would be suspended (AR 3.0).

On May 24, 2002, after informal attempts to correct violations of the Term Grazing Permit with you, the District Ranger issued a Notice of Non-Compliance letter to you (AR 11.0).

On June 5, 2002, District Ranger Larry Raley made a decision to cancel 5% of your Term Grazing Permit numbers, and suspend an additional 20% of Term Permit numbers for a period of two years (AR 14.0).

On July 5, 2002, you filed an appeal of the District Ranger's June 5, 2002 decision (AR 19.0).

On September 12, 2002, the District Ranger issued a second Notice of Non-Compliance letter to you (AR 36.0).

On October 8, 2002, the District Ranger withdrew his June 5, 2002 decision to cancel 5% of your Term Grazing Permit numbers, and suspend an additional 20% of Term Permit numbers for a



period of two years. The District Ranger issued a new decision canceling 25% of the Term Grazing Permit numbers (AR 45.0). This decision was made based on a failure to correct Term Grazing Permit violations previously identified.

On November 16, 2002, you appealed the October 8, 2002 decision. I received the appeal on November 22, 2002 (AR 54.0).

On November 27, 2002, I acknowledged receipt of the November 16, 2002 appeal. In addition, I requested clarification from you regarding a request for mediation (AR 57.1).

On December 4, 2002, you requested mediation (AR 58.0).

On December 10, 2002, I granted an automatic stay of your appeal to allow for mediation (AR 58.1).

On January 7, 2003, you inquired as to the status of four appeals (AR 75.0).

On January 9, 2003, I responded to your January 7, 2003 letter (AR 76.0).

On January 21, 2003, the District Ranger informed me that efforts to resolve the appeal through mediation had failed (AR 61.0).

On January 24, 2003, I provided notice to you regarding re-instatement of timeframes and procedures applicable to the October 8, 2002 appeal. In this letter, I provided notice that the District Ranger would be required to submit his responsive statement to me no later than February 24, 2003 (AR 62.0).

On February 20, 2003, the District Ranger requested an extension through March 21, 2003, to prepare his responsive statement (AR 62.1).

On February 27, 2003, I granted an extension to the District Ranger through March 21, 2003 (AR 62.0).

On March 20, 2003, the District Ranger requested an additional two weeks through April 4, 2003, to prepare his responsive statement (AR 65.0).

On March 27, 2003, I granted an extension to the District Ranger through April 4, 2003, to prepare his responsive statement (AR 66.0).

On April 4, 2003, Cindy McArthur hand delivered a copy of the District Ranger's Responsive Statement to you (AR 77.0).

On April 11, 2003, I informed you of the due date for comments on the District Ranger's responsive statement. This date was identified as April 25, 2003. I also encouraged you to schedule an appointment for your oral hearing (AR 78.0).

On April 18, 2003, you requested an extension to be set after the end of May to submit your comments (AR 79.0).

On April 25, 2003, I granted you an extension through June 1, 2003 (AR 80.0).

On May 29, 2003, you requested an additional extension of time to prepare your comments and schedule your oral hearing (AR 81.0).

On June 2, 2003, I granted you an extension through June 16, 2003 (AR 82.0).

On June 16, 2003, I conducted your oral hearing (AR 83.0).

On July 10, 2003, the appeal record was closed (AR 84.0).

POINTS OF APPEAL (AR 85.0)

My review of this appeal was confined to the substantive points raised in the original appeal, the appeal record, the oral hearing, federal regulations, and policies and operational procedures as set forth in the directives system of the USDA Forest Service. Issues identified by the Appellant were numbered to facilitate this review.

Issue 01: October 8, 2002 decision (25% cancellation)

Contention: Appellant contends that the withdrawal of the June 5, 2002 decision (5% cancellation and 20% suspension), and replacing it with the October 8, 2002 decision (25% cancellation), is arbitrary and capricious; the Appellant contends the Forest Service withdrew the first decision because it could not adequately defend it; the Appellant contends the withdrawal of the decision has abrogated his right to relief under the appeal process; the Appellant contends the decision is unfair, and just another action that points to the Forest Service being anti-livestock, and targeting the permittees.

Response: The decision and rationale for withdrawing the June 5, 2002 decision, and making a new decision to cancel 25% of Term Permit numbers was based on continued violations of the Terms and Conditions of the Term Grazing Permit. These violations were identified and communicated to the Appellant in letters dated May 15, 2001; April 1, 2002; May 24, 2002; May 30, 2002; June 5, 2002; September 12, 2002; September 13, 2002; and October 8, 2002 (AR 1.0, 9.1, 11.0, 13.0, 14.0, 36.0, 37.0, and 45.0).

The Appellant was provided appeal rights, and was granted an automatic stay, pending the outcome of the administrative appeal process (AR45.0, and 58.1)

Finding: The District Ranger identified the violation of the Term Grazing Permit, provided the Appellant an opportunity to achieve compliance, and initiated action when violations were not corrected. These actions are consistent with Forest Service policy and direction, as provided by FSM 2231.62, and FSH 2209.13, 16.2. The District Ranger is affirmed on this issue.

Issue 02: Contents of Annual Operating Instructions dated 1/10/01, and letters dated 11/8/02, and 11/9/02

Contention: Appellant contends the contents of the AOP/I dated 1/10/01, and letters dated 11/8/02 and 11/9/02, are arbitrary, capricious, and tainted with unreasonable and wrong information.

Response: I could not locate any documents in the record dated 1/10/01, 11/8/02, and 11/9/02. However, the following records were located in the record: Notes of annual validation meeting, dated 1/10/02; decision by the District Ranger, canceling 25% of Term Grazing Permit numbers, dated 10/8/02, and letter to the Appellant by the District Ranger, dated 10/9/02.

Finding: The Appellant provided insufficient information necessary to evaluate and rule on the merits of his claims.

Issue 03: Lack of signature on Annual Operating Instructions by the Appellant

Contention: The Appellant contends he never agreed with the AOP/I, and did not sign it. Appellant contends the copy he was given had no signatures for anyone.

Response: The Annual Operating Plan/Instructions were hand delivered by Ed Holloway on 3/8/02 (AR 6.0).

Finding: There is no requirement for the Appellant to sign his Annual Operating Instructions. If the Appellant disagrees with instructions contained within the AOP/I, he may elect to utilize the administrative appeal process. Appeal language was included in the Annual Operating Instructions, dated 3/12/02 (AR 6.0). The District Ranger is affirmed on this issue.

Issue 04: Management elements contained within the Annual Operating Instructions/Plan

Contention: The Appellant claims that the monitoring system and facts contained within the AOP/I were introduced under the ongoing and unfinished NEPA study; the Appellant claims that the NEPA analysis and decisions have to finish the public and appeals process before being implemented on the land; the Appellant claims that the NEPA process between the allotment owner and the Forest Service has not been approved, is under appeal, and therefore, is not approved for use at the present time; the Appellant claims that key monitoring areas, training for the permittee, monitoring methodology, and collaboration with the permittee in conducting monitoring, are being illegally implemented.

Response: The NEPA decision has not been implemented. Management direction for the Cedar Breaks allotment has been implemented through instructions included within the Annual Operating Plans and amendments (AR 6.0, 7.0, 25.0, 37.0, and 40.0)

Finding: The District Ranger identified authorized numbers, pasture rotation schedule, key monitoring sites, allowable forage use limits, and special instructions. These elements are appropriate and consistent with administration of Term Grazing Permits. Appropriate appeal language was included within the Annual Operating Plan/Instructions and amendments (AR 6.0, 25.0, 37.0, and 40.0). The District Ranger is affirmed on this issue

Issue 05: Monitoring

Contention: Appellant contends, “it is wrong to hold me accountable for monitoring when I have not been trained in the process, and the process has not gone through calibration or final approval”.

Response: The Appellant has been invited, or has directly participated in monitoring, on several occasions (AR 12.0, 23.0, 33.0, 43.0, 44.0, 48.0, 50.0, 71.0 and 72.0). In addition, on 1/28/03, the Glenwood Ranger District and Range Improvement Task Force hosted a monitoring workshop on the Cedar Breaks allotment. The purpose of this workshop was to review a methodology developed by the Glenwood Ranger District, and reviewed by Dr. Holechek, to implement monitoring on the Cedar Breaks allotment (AR 69.0). The Appellant, Range Improvement Task Force, New Mexico Department of Agriculture, and Forest Service participated in this workshop (AR 70.0).

Utilization standards are identified within the Annual Operating Plan/Instructions. Once implemented, these instructions become part of the Term Grazing Permit. Failure to comply with utilization standards is a violation of the terms and conditions of the grazing permit: specifically, part 2 paragraph 8(a). Paragraph 8(a) states, “The allotment management plan for the land described on page 1, Part 1, is a part of this permit, and the permittee will carry out its provisions, other instructions, or both as issued by the Forest Officer in charge....”. Part 1, section 3, of the Term Grazing Permit states “It is fully understood and agreed that this permit may be suspended or cancelled, in whole or in part, after written notice, for failure to comply with any of the terms and conditions specified in Parts 1, 2, and 3 hereof, or any of the regulations of the Secretary of Agriculture on which this permit is based, or the instructions of Forest officers issued thereunder...”. By signing the Term Grazing Permit, the Appellant agreed to abide by all terms and conditions of the Term Grazing Permit. The Appellant signed the grazing permit on 3/11/96.

The Forest Service welcomes participation by our permittees in conducting monitoring. In fact, we encourage permittees to participate. The record demonstrates the Appellant was invited and did, in fact, participate in monitoring (AR 12.0, 23.0, 33.0, 43.0, 44.0, 48.0, 50.0, 71.0 and 72.0).

Finding: Ultimately, it is the Appellant’s responsibility to be aware of allotment conditions, and to ensure that violations of the Term Grazing Permit do not occur. Training was provided for the Appellant and a protocol for monitoring was reviewed by the RITF and NMDA. The District Ranger is affirmed on this issue.

Issue 1: Annual Operating Plan/Instructions amendments

Contention: Appellant contends that there is a continual process of correcting mistakes in the AOP/I concerning livestock moves.

Response: Several amendments have been made to the Annual Operating Plan Instructions. These amendments were based on a variety of reasons, including, a request by the permittee, monitoring results, and forage conditions (AR 7.0, 25.0, 37.0, 40.0, and 51.0).

Forage production is highly influenced by the amount, and timing, of precipitation. In addition, livestock distribution patterns and resulting forage use are often influenced by available forage, water availability, and management intensity. These elements change during, and between, grazing years. As a result, Forest management must be flexible, adaptive, and responsive to changes, which are observed on the ground.

Finding: Adjustments of Annual Operating Plan/Instructions due to changing forage conditions, observed utilization, and permittee requests, are reasonable and consistent with Forest Service Policy. The District Ranger is affirmed on this issue.

Issue 2: Permitted time to remove livestock

Contention: The Appellant contends that he is told to make decisions about livestock moves, and then letters come from the District that instruct him to make the moves in one day.

Response: The Appellant does not reference a specific letter. However, two letters are included in the record, which provide direction to move cattle immediately (AR 37.0, and 45.0).

On 8/29/02, the Appellant contacted the District Ranger and asked if he should move cattle out of the North Cedar Breaks Pasture because he thought there was a mistake in the AOP/I. This was one day prior to cattle being moved as scheduled. The Appellant was permitted to remain through the Labor Day weekend, in order to provide the District an opportunity to inspect the pasture. On September 3, 2002, the North Cedar Breaks Pasture was inspected. The District Ranger determined cattle should be removed immediately. A summary of these events is included in the September 13, 2002 AOP/I amendment (AR 37.0).

On October 8, 2002, The District Ranger sent the Appellant a letter, stating, "Hugh B., it is your responsibility as a permittee to ensure that livestock are moved from an area when or prior to utilization levels being met". In this same letter, the District Ranger requested that livestock be removed from the Community pasture by October 10, 2002 (AR 45.0).

Finding: The District Ranger provided a narrow time frame to remove livestock. However, the permittee had been notified earlier regarding the requirement to move cattle from the North Cedar Breaks pasture (AR 37.0). The District Ranger was justified by his concerns regarding excessive use, and the potential for resource damage to occur in the Community pasture (AR 45.0). The District Ranger is affirmed on this issue.

Issue 3: Communication with the Appellant

Contention: The Appellant contends that when the Forest Service sees stray livestock in a pasture, they never call him; instead, they send a notice in the mail, several days later.

Response: The record reveals the District Ranger and his staff have met with the Appellant in the field, the office, and/or called him in an attempt to resolve non-compliance. (AR 1.0, 4.0, 6.0, 8.0, 9.1, 23.0, 34.0, 43.0, 44.0, 48.0, and 50.0).

When attempts to informally resolve an issue are not successful, a more formal procedure is initiated. This requires a Notice of Non-Compliance, and initiation of permit action, when the permit violation is not resolved.

Finding: The District Ranger has made a reasonable attempt at communicating with the Appellant. The District Ranger is affirmed on this issue.

Issue 4: Involvement by Appellant in monitoring

Contention: Appellant contends that most of the monitoring has been done without his knowledge or participation.

Response: The Appellant has been invited, or has directly participated, in monitoring, on several occasions (AR 12.0, 23.0, 33.0, 43.0, 44.0, 48.0, 50.0, 71.0 and 72.0). In addition, on 1/28/03, the Glenwood Ranger District and Range Improvement Task Force hosted a monitoring workshop on the Cedar Breaks allotment. The purpose of this workshop was to review a methodology developed by the Glenwood Ranger District, and reviewed by Dr. Holechek, to implement monitoring on the Cedar Breaks allotment (AR 69.0). The Appellant, Range Improvement Task Force, New Mexico Department of Agriculture, and Forest Service participated in this workshop (AR 70.0).

Finding: The Appellant has been afforded an opportunity to participate in monitoring. The District Ranger is affirmed on this issue.

Issue 5: Movement of Livestock

Contention: The Appellant contends that he has always moved livestock in a timely manner; there are always stray livestock in a pasture after the move is made; and strays are moved as they are found.

Response: The Record reveals that the Appellant has not moved livestock in a timely manner. As a result, violations of the Term Grazing Permit have been documented (1.0, 8.0, 9.1, 11.0, 13.0, 14.0, 25.0, 33.0, 34.0, 36.0, 37.0, 38.0, 40.0, 42.0, 43.0 and 45.0).

A pasture use plan is identified within the Annual Operating Plan/Instructions. Once implemented, these instructions become part of the Term Grazing Permit. Failure to comply with the scheduled pasture rotation plan is a violation of the terms and conditions of the grazing permit: specifically, part 2, paragraph 8(a). Paragraph 8(a) states, “The allotment management plan for the land described on page 1, Part 1, is a part of this permit, and the permittee will carry out its provisions, other instructions, or both as issued by the Forest Officer in charge....”. Part 1, section 3, of the Term Grazing Permit, states “It is fully understood and agreed that this permit may be suspended or cancelled, in whole or in part, after written notice, for failure to comply with any of the terms and conditions specified in Parts 1, 2, and 3 hereof, or any of the regulations of the Secretary of Agriculture on which this permit is based, or the instructions of Forest Officers issued thereunder....”. By signing the Term Grazing Permit, the Appellant agreed to abide by all terms and conditions of the Term Grazing Permit. The Appellant signed the grazing permit on 3/11/96.

Finding: Ultimately, it is the Appellant’s responsibility to comply with the pasture rotation, and to ensure that violations of the Term Grazing Permit do not occur. The District Ranger identified the violation of the Term Grazing Permit, provided the Appellant an opportunity to achieve compliance, and initiated action when violations were not corrected. These actions are consistent with Forest Service policy and direction as provided by FSM 2231.62, and FSH 2209.13, 16.2. The District Ranger is affirmed on this issue.

Issue 6: Forest Service monitoring

Contention: The Appellant contends that monitoring by Forest Service personnel has been proven wrong, many times.

Response: No evidence to support this claim was provided.

Finding: The Appellant provided insufficient information necessary to evaluate, and rule on the merits of this issue.

Issue 7: Livestock authorization in the San Francisco River

Contention: The Appellant contends that his AOP/I instructs him to keep all livestock out of the San Francisco River, and then permission to do the opposite is given orally.

Response: The Appellant has been given explicit instructions to keep livestock out of the San Francisco River (AR 1.0, 6.0, 8.0, 9.1, 11.0, 12.0, and 14.0).

Finding: The District Ranger is affirmed on this issue.

Issue 8: Occasional cattle use

Contention: The Appellant claims there is confusion over the meaning of occasional livestock use. Does it mean one cow in the wrong place or several cows for a short time?

Response: The Appellant did not provide a specific reference to how this statement may have been used. However, in a letter to the Appellant, dated 5/30/02, the Deciding Official states “Hugh B., I have continually told you that I would work with you if an occasional cow leaked into the river area, and you were responsive in removing it. Forty plus cattle, on several occasions, does not, in my mind, constitute incidental leaks.” (AR 13.0).

The Appellant has been given explicit instructions to keep livestock out of the San Francisco River (AR 1.0, 6.0, 8.0, 9.1, 11.0, 12.0, and 14.0).

Finding: The District Ranger has provided clear directions to the Appellant to prevent cattle use of the San Francisco River. The District Ranger is affirmed on this issue.

Issue 9: Prior notification, before action being taken

Contention: The Appellant states, “we will be given plenty of notice before action is taken against us, and then action is taken without notice”.

Response: In a letter dated May 15, 2001, the Deciding Official summarized his attempts of providing the Appellant with advance notice prior to taking action (AR 1.0). This letter included: 1) documentation of a meeting at the Appellant’s home on 2/22/01, in which the Appellant was informed that no livestock use of the River pasture would be allowed; 2) documentation of meeting at the Appellant’s home on March 6, 2001, in which the Appellant was informed that any further livestock access into the River pasture would result in a show cause letter; 3) documentation of “show cause” letter, dated March 29, 2001.

In addition to the above efforts, the Deciding Official provided the Appellant with additional advance notice. These efforts included: 1) Annual Operating Plan/Instructions dated 3/12/02; 2) letter to Appellant dated 4/1/02; 3) Notice of Non-Compliance letter dated 5/24/02; 4) letter to Appellant dated 5/30/02; 5) letter to Appellant dated 6/5/02; 6) Annual Operating Instructions dated 8/8/02; 7) letter to Appellant dated 8/23/02; 8) Notice of Non-Compliance letter dated 9/12/02; 9) letter to Appellant dated 9/13/02; 10) Annual Operating Instructions dated 9/19/02; and 11) letter to Appellant dated 10/8/02 (AR 6.0, 9.1, 11.0, 13.0, 14.0, 25.0, 31.1, 36.0, 37.0, 40.0, and 45.0).

Finding: The Deciding Official provided the Appellant with early, and ample, notification, prior to taking action. The District Ranger is affirmed on this issue.

Issue 10: Fencing and cattle guards

Contention: The Appellant contends fence materials and cattle guards would be provided; then, as a penalizing action, the material is taken from him.

Response: This issue relates to a separate decision, and appeal received from the Appellant (AR 56.0). The District Ranger withdrew this decision (AR 42.0). A new decision was made, and documented to the Appellant in an agreement, dated March 6, 2003 (AR 64.0). As a result, the Forest Supervisor dismissed the above appeal (reference appeal 03-03-06-0011-A251).

Finding: This issue is outside the scope of this appeal and has been previously addressed.

Issue 11: Inconsistency in permit action

Contention: Appellant contends that he has been told that he could have occasional livestock use in the most sensitive, endangered species area of the river; However, in his large pastures without endangered species habitat, non-compliance is documented and action is taken for a few strays that were missed.

Response: The Appellant has been given explicit instructions to keep livestock out of the San Francisco River (AR 1.0, 6.0, 8.0, 9.1, 11.0, 12.0, and 14.0). In addition, the decision and rationale for withdrawing the June 5, 2002 decision, and making a new decision to cancel 25% of Term Permit numbers was based on continued violations of the Terms and Conditions of the Term Grazing Permit. These violations were identified and communicated to the Appellant, in letters dated May 15, 2001; April 1, 2002; May 24, 2002; May 30, 2002; June 5, 2002; September 12, 2002; September 13, 2002; and October 8, 2002 (AR 1.0, 9.1, 11.0, 13.0, 14.0, 36.0, 37.0, and 45.0).

Finding: The District Ranger identified the violation of the Term Grazing Permit, provided the Appellant an opportunity to achieve compliance, and initiated action when violations were not corrected. These actions are consistent with Forest Service policy and direction as provided by FSM 2231.62, and FSH 2209.13, 16.2. The District Ranger is affirmed on this issue.

Issue 12: Lack of partnership

Contention: The Appellant contends that the District Ranger has told him that the grazing allotment is a partnership; the District Ranger tells the Appellant, continually, that he makes the decisions, and that I do not like the decisions; this process is not a partnership.

Response: The record reveals that the District Ranger and his staff have met with the Appellant in the field, the office, or called him in an attempt to informally resolve non-compliance issues with the Appellant. This documentation has been by letter, phone calls, personal visits, and field visits (AR1.0, 6.0, 8.0, 9.1, 34.0, 43.0, 44.0, 48.0, and 50.0).

When attempts to informally resolve an issue are not successful, a more formal procedure is initiated. This requires a Notice of Non-Compliance, and initiation of permit action, when the permit violation is not resolved.

Finding: The District Ranger has made a reasonable attempt to communicate, cooperate, and collaboratively work with the Appellant. The District Ranger is affirmed on this issue.

Issue 13: Prior Warning

Contention: The Appellant asked the District Ranger in a letter dated 9/10/02, to be given ample warning before cattle have to be moved; no warning is given; instead he gets a non-compliance letter and is told he has over-used a pasture.

Response: In a letter dated May 15, 2001, the Deciding Official summarized his attempts of providing the Appellant with advance notice prior to taking action (AR 1.0). This letter included 1) documentation of a meeting at the Appellant's home on 2/22/01 in which the Appellant was informed that no livestock use of the River pasture would be allowed; 2) documentation of meeting at the Appellant's home on March 6, 2001, in which the Appellant was informed that any further livestock access into the River pasture would result in a show cause letter; 3) documentation of "show cause" letter, dated March 29, 2001.

In addition to the above efforts, the Deciding Official provided the Appellant with additional advance notice. These efforts included: 1) Annual Operating Plan/Instructions dated 3/12/02; 2) letter to Appellant dated 4/1/02; 3) Notice of Non-Compliance letter dated 5/24/02; 4) letter to Appellant dated 5/30/02; 5) letter to Appellant dated 6/5/02; 6) Annual Operating Instructions dated 8/8/02; 7) letter to Appellant dated 8/23/02; 8) Notice of Non-Compliance letter dated 9/12/02; 9) letter to Appellant dated 9/13/02; 10) Annual Operating Instructions dated 9/19/02; and 11) letter to Appellant dated 10/8/02 (AR 6.0, 9.1, 11.0, 13.0, 14.0, 25.0, 31.1, 36.0, 37.0, 40.0, and 45.0).

When attempts to informally resolve an issue are not successful, a more formal procedure is initiated. This requires a Notice of Non-Compliance letter. A Notice of Non-Compliance letter provides an opportunity to remedy the violation within a prescribed time period. If the violation is not remedied, or occurs in again in the future, further permit action may be initiated.

Finding: The Deciding Official provided the Appellant with early, and ample, notification prior to taking action. The District Ranger is affirmed on this issue.

Issue 14: No instructions were given regarding livestock moves

Contention: The Appellant contends in a letter dated 9/10/02 that he asked for instructions regarding livestock moves; he received no instructions until the Forest Service deemed the area to be over-grazed.

Response: Annual Operating Instructions, and amendments, have been provided to the Appellant regarding management direction for the Cedar Breaks allotment (AR 6.0, 7.0, 25.0, 37.0, and 40.0).

A pasture use plan is identified within the Annual Operating Plan/Instructions. Once implemented, these instructions become part of the Term Grazing Permit. Failure to comply with the scheduled pasture rotation plan is a violation of the terms and conditions of the grazing permit: specifically, part 2 paragraph 8(a). Paragraph 8(a) states, "The allotment management plan for the land described on page 1, Part 1, is a part of this permit, and the permittee will carry out its provisions, other instructions, or both as issued by the Forest Officer in charge....". Part 1, section 3, of the Term Grazing Permit states, "It is fully understood and agreed that this permit may be suspended or cancelled, in whole or in part, after written notice, for failure to comply with any of the terms and conditions specified in Parts 1, 2, and 3 hereof, or any of the regulations of the Secretary of Agriculture on which this permit is based, or the instructions of Forest officers issued thereunder....". By signing the Term Grazing Permit, the Appellant agreed to abide by all terms and conditions of the Term Grazing Permit. The Appellant signed the grazing permit on 3/11/96.

Finding: Ultimately, it is the Appellant's responsibility to comply with the pasture rotation, and to insure that violations of the Term Grazing Permit do not occur. The District Ranger issued Annual Operating Instructions, identified the violation of the Term Grazing Permit, provided the Appellant an opportunity to achieve compliance, and initiated action when violations were not corrected. These actions are consistent with Forest Service policy, and direction, as provided by FSM 2231.62, and FSH 2209.13, 16.2. The District Ranger is affirmed on this issue.

Issue 15: No instructions were given regarding horse management

Contention: The Appellant contends in a letter dated 9/10/02 that he asked for instructions as to when his horses should be moved, and where to move them; the only answer came at a much later date when action was taken on the grazing permit.

Response: Annual Operating Instructions were issued on March 12, 2002. In these instructions, horse use was provided for in the Community Pasture and House pasture. In addition, the AOI provided for moving livestock to the next scheduled pasture or off the allotment when forage utilization standards were met.

Finding: The Annual Operating Plan/Instructions, dated March 12, 2002, identified pastures available for horse use. The District Ranger is affirmed on this issue.

Issue 16: Movement of cattle from North Cedar Breaks (NCB) to East CCC (ECCC) pasture

Contention: Appellant contends in a letter dated 9/10/902 that he asked for the normal scheduled move from the North Cedar Breaks Pasture to the East CCC Pasture for the ease of

movement and branding; it was demanded that he move to the West CCC Pasture; this was later changed, and he did move from NCB to the ECCC Pasture.

Response: On September 19, 2002, the AOP/I was amended providing for livestock to be moved to the East CCC pasture, as per the Appellants request. This action occurred prior to permit action being initiated on October 8, 2002 (AR 40.0).

Finding: The District Ranger accommodated the Appellant's request. The District Ranger is affirmed on this issue.

Issue 17: Forage conditions of the East CCC Pasture

Contention: Appellant contends Forest Service indicated that no feed existed in the East CCC Pasture; subsequent field trip on 9/17/02 showed plenty of feed.

Response: On September 3, 2002, a monitoring inspection was conducted on the West and East CCC Pastures. For the East CCC Pasture, leaf lengths of Blue grama were identified as 2-3 inches. In addition, this inspection identified this pasture as having not received much rain and many plants were drying out before completing their growth cycle (AR 33.0).

Finding: The monitoring report does not state that there was no feed. It states, "The pasture has not received much rain, and the plants appear to be drying out". The monitoring report speaks for itself. The District Ranger is affirmed on this issue.

Issue 18: Forage conditions of the West CCC Pasture

Contention: Appellant contends that the Forest Service assessment of forage conditions in the West CCC pasture was proved to be wrong.

Response: On September 3, 2002, a monitoring inspection was conducted on the West and East CCC Pastures. For the West CCC Pasture, forage production was documented as low, weed distribution and density were documented as high, annual grass plants were no longer green, and only a small percentage of the perennial grass plants produced viable seed (AR 33.0). On September 13, 2002, an AOI amendment was completed. This AOI estimated the capacity for the West CCC Pasture at a total of 110 AM, or 54 head for two months (AR 37.0). However, as per the Appellant's request, the AOI was amended on September 19, 2002 to go into the East CCC pasture (AR 40.).

Finding: No information was provided to substantiate the Appellant's claim. The monitoring report speaks for itself. The District Ranger is affirmed on this issue.

Issue 19: Warning, prior to permit action

Contention: Appellant contends that before action is taken on our permit, he is supposed to be given a chance to correct the situation with a warning through a Non-Compliance letter; this has been done in the past; this last action letter dated 10/8/02, had no such warning letter.

Response: Two Notice of Non-Compliance letters were issued prior to taking action. One is dated, 5/24/02, and the other is dated 9/12/02 (AR 11.0, and 36.0).

Finding: The Deciding Official provided the Appellant with a Notice of Non-Compliance letter prior to taking action on his permit. This is consistent with Forest Service Policy. The District Ranger is affirmed on this issue.

Issue 20: Conflicting information

Contention: The Appellant contends that information taken during monitoring by Ed Holloway and Cynthia McArthur indicated that feed conditions were good, but a subsequent letter from the District Ranger said that there was very limited feed.

Response: On October 17, 2002, monitoring was completed on the East CCC Pasture. Monitoring revealed utilization levels as light to moderate, overall feed conditions as good, with September moisture facilitating additional plant growth. However, utilization levels were noted as being approached in the P3 key area. The inspection stated “increased efforts by the permittee would be required to entice cattle away from this key area, and make use of available forage throughout the remaining portions of the pasture.” (AR 48.0). On October 25, 2002, a letter was mailed to the Appellant describing use standards as being approached in the P3 monitoring location. This information was provided to make the Appellant aware of the level of use occurring (AR 51.0).

Finding: The District Ranger provided information to the Appellant to make him aware of existing forage conditions and utilization patterns. This is consistent with administration of grazing activities. The District Ranger is affirmed on this issue.

Issue 21: Unanswered letters

Contention: The Appellant contends that letters requesting answers or information from the District Ranger are partially answered, or not answered at all.

Response: The Appellant does not provide any details or documents to substantiate his claim. It is unclear what documents the Appellant is referring to.

Finding: The Appellant provided insufficient information necessary to evaluate and rule on the merits of his claims.

Issue 22: Cattle Movements

Contention: The Appellant contends that on 8/31/02, he contacted the District Ranger and asked if he should move cattle out of the North Cedar Breaks Pasture; he thought there was a mistake in the AOP/I; the District Ranger concurred that it was a mistake; he did not have to move his cattle until the Appellant returned from a week long trip in which he left on 9/3/02; furthermore, the Appellant contends that, while he was gone on this weeklong trip, over-utilization and non-authorized use occurred in this pasture.

Response: On August 29, 2002, the Appellant called the District Ranger to determine if he could stay in the North Cedar Breaks pasture; he thought there was a mistake. This was one day prior to cattle being moved as scheduled. The Appellant was permitted to remain through the Labor Day weekend in order to provide the District an opportunity to inspect the pasture. On September 3, 2002, the North Cedar Breaks pasture was inspected, and the District determined that cattle should be removed immediately. A summary of these events is included in the September 13, 2002 AOP/I amendment (AR 37.0).

Finding: The Deciding Officer provided a narrow time frame to remove cattle. However, the permittee had been notified earlier regarding the requirement to move cattle from the North Cedar Breaks pasture (AR 37.0), and the Deciding Officer was justified by his concerns regarding excessive use and the potential for resource damage to occur (AR 45.0). The District Ranger is affirmed on this issue.

Issue 23: River Pasture

Contention: In a meeting with the District Ranger and Allen Graves, the Appellant asked for the AOP/I to be corrected to include moves from the East CCC Pasture to the River Pasture; the District Ranger and Allen Graves said the AOP/I would reflect this move; the AOP/I was never amended to reflect the move; the District Ranger does not want the record to reflect that he gave him permission to use the River Pasture.

Response: Annual Operating Instructions and amendments have been issued providing management direction for the Cedar Breaks Allotment (AR 6.0, 7.0, 25.0, 37.0, 40.0, and 51.0).

Finding: The AOP/I, dated October 25, 2002, is the only instrument which authorized use of the River Pasture (AR 51.0). The remaining Annual Operating Plans/Instructions clearly excluded the use of the River Pasture. Management direction for the Cedar Breaks Allotment has been appropriately identified within the Annual Operating Plan/Instructions. The District Ranger is affirmed on this issue.

Issue 24: Monitoring

Contention: Monitoring has been done during the growing season; subsequent stubble height measurements that show 85% use are nothing more than a plant that has not had a chance to grow; areas shown to have no feed have later been monitored and shown to have plenty of feed.

Response: On July 23, 2002, monitoring was completed on the River Pasture (AR 23.0). On October 3, 2002, monitoring was completed on the Community Pasture (AR 43.0).

Finding: Forage utilization standards have been exceeded as documented by the monitoring records. The District Ranger is affirmed on this issue.

Issue 25: Monitoring

Contention: Forest Service monitoring has shown 85% use. Vic Jenkins and Appellant were present during this monitoring and concluded that, because of the drought, the plant just simply did not grow. This was proven true during the next growing season. The same area went through a full growing season with no grazing and the plants appeared to have been overgrazed.

Response: On July 23, 2002, monitoring was completed on the River Pasture during the growing season (AR 23.0).

Finding: Forage utilization standards were exceeded as documented by the monitoring records. The District Ranger is affirmed on this issue.

Issue 26: Monitoring

Contention: Appellant was told by the District Ranger to come off the allotment by 10/15/02 because there was no feed. The Appellant claimed this was found to be false, after the field inspection conducted on 9/17/02, by Chris Allison and Forest Supervisor Marcia Andre.

Response: On September 3, 2002 a monitoring inspection was conducted on the West and East CCC Pastures (AR 33.0). Forage production was documented as low, weed distribution, and density documented as high, annual grass plants were no longer green, and only a small percentage of the perennial grass plants produced viable seed. On September 13, 2002, an AOI amendment was completed (AR 37.0). Capacity was estimated for a total of 110 AM, which would support 110 cattle for one month, or 54 head for two months. Instructions were given to the Appellant to make necessary arrangements to come off the entire allotment once use levels were met in the West CCC Pasture. However, at the Appellant's request, the AOI was amended. On September 19, 2002, the Appellant was instructed to move his cattle into the East CCC Pasture until November 3, 2002, at which time livestock would be moved into the West CCC Pasture until 2/28/03 (AR 40.0). On March 3, 2003, the 2003 grazing year instructions were issued (AR 63.0). As per this AOP/I, livestock are scheduled to be in the West CCC Pasture until March 15, 2003, at which time livestock would then be moved to the East CCC Pasture

until approximately April 30, 2003. As the amendments reveal, the District has been working with the Appellant to accommodate his cattle, based on changing forage conditions and distribution patterns.

Forage production is highly influenced by the amount and timing of precipitation. In addition, livestock distribution patterns and resulting forage use are often influenced by available forage, water availability, and management intensity. These elements change during, and between, grazing years. As a result, Forest management must be flexible, adaptive, and responsive to changes, which are observed on the ground.

Finding: Adjustments of Annual Operating Plan/Instructions, due to changing forage conditions, observed utilization, and permittee requests, are reasonable and consistent with Forest Service Policy. The District Ranger is affirmed on this issue.

Issue 27: Monitoring of North and South Cedar Breaks pastures

Contention: The Appellant contends that he was told he had no available feed in the North and South Cedar Breaks Pastures; and later, monitoring proved this to be wrong; the Appellant was present during monitoring by Ed Holloway and Cindy McArthur, and they said I had enough feed to use the pasture during my regular rotation sequence.

Response: Inspections were conducted on the North and South Cedar Breaks Pastures on August 1, 2002, September 3 and 4, 2002, and September 16, 2002 (AR 24.0, 33.0, and 38.0).

Finding: Forage utilization standards have been met, or exceeded, as documented by the monitoring records. The District Ranger is affirmed on this issue.

Issue 28/29: Fencing Materials and cattle guards

Contention: Fencing material and cattle guards, for essential fencing included in the NEPA study, were dropped in favor of the same material to be used on non-essential fencing project; the Appellant contends that he has been told that fencing material is available for fencing private land from Forest land on the mesa, and then when he wants to start the project he is then told that there is no fencing material because it was all used on the river fencing project. He contends that the river fence construction project only used two rolls of barbwire and about 35 steel posts

Response: This issue relates to a separate decision and appeal received from the Appellant (AR 56.0). The District Ranger withdrew this decision (AR 42.0). A new decision was made and documented to the Appellant in an agreement dated March 6, 2003 (AR 64.0). As a result, the Forest Supervisor dismissed the above appeal (reference appeal 03-03-06-0011-A251).

Finding: This issue is outside the scope of this appeal and has been previously addressed.

Issue 30: River Fencing

Contention: The Appellant contends that fencing material and Forest Service labor are used to fence private land from Forest Service land on other allotments; his allotment is treated differently; Appellant even agreed to provide the labor on the same type project; the Forest Service will provide the materials.

Response: The Forest built several sections of fence along the San Francisco River in 2000. This was in part, due to a stipulated agreement. The purpose of these fences was to exclude cattle use of the San Francisco River, not separate private land from National Forest. The particular fence section at issue is required to exclude cattle off the private land from accessing the National Forest. The Appellant has been adamant in his beliefs regarding reasons the river should not be fenced (AR 0.0). Therefore, this fence was determined to be a lower priority for completion. However, the Forest Service did complete the construction of this fence at a later date (AR 13.0).

Finding: The Forest Service participates with permittees in the construction of improvements, which result in mutual benefits. However, these endeavors are generally entered into when both parties can agree on the need and the purpose of the improvements. In this case, the Appellant was originally opposed to the construction of this fence (AR 0.0). Therefore, the District Ranger determined this improvement to be a lower priority for completion. The District Ranger is affirmed on this issue.

Issue 31: River Fencing

Contention: The Appellant contends that the District Ranger signed an agreement to build a fence in the river; later the Ranger said he would not build the fence; after over a year, the Ranger finally built the fence.

Response: On July 27, 2001, a mediation agreement was entered into with the Appellant and District Ranger (AR 3.0). The following sections are pertinent:

Item 4. If the U.S. Fish and Wildlife Service participates in an agreement that allows the Appellant incidental use of the 35 acres of NFS land in conjunction with his private land:

- a. The Forest Service will purchase the fence materials to fence along Appellant's private land boundary separating the private land from the River Pasture.
- b. The Forest Service will purchase two cattle guards to be placed at two private land access points.
- c. Appellant will build and maintain the fence mentioned, and install the two cattle guards and a gate.

Item 5. If the U.S. Fish and Wildlife Service does not participate in an agreement that allows Hugh B. incidental use of the 35 acres of NFS land:

- a. The Forest Service will purchase fencing material, and build a fence along the boundary of the 35 acres of NFS land and Appellant's land.
- b. If Appellant wants a fence between the private property and the River pasture, it will be purchased, built and maintained by Appellant.
- c. Miscellaneous materials will be kept on hand for the purpose of incidental fence maintenance, and in the event of re-construction needs, the Forest Service will participate.

On 1/10/02, during an annual validation meeting, it was agreed to provide fencing materials for the private land and build a fence to exclude cattle from the river (AR 4.0). However, after considering the location of fence and its susceptibility to be being washed out by high water, the District Ranger decided not to construct the fence (AR 7.0).

On June 12, 2002, the District Ranger received a letter from the Appellant demanding, "that he build the fence along the San Francisco River." (AR 16.0). Because of resource concerns, and the District Ranger's desire to resolve conflicts with the Appellant, the District Ranger decided to build the fence.

Finding: The District Ranger provided the materials and labor for the construction of this fence. However, a flood destroyed the fence. After the flood, the District Ranger and Appellant cooperated in the reconstruction of the fence. The location of this fence needs to be reviewed. If the fence cannot be located in such a manner to avoid flood damage, no more materials or labor should be invested on this improvement.

Issue 32: River Fence Maintenance

Contention: The Appellant contends that the District Ranger told him that it was the Appellant's call to reconstruct the river fence after the flood demolished it; this was meant that the Appellant would call the Forest Service when he wanted to reconstruct the fence and he would be in charge of the fence building; fence project was not completed; Forest Service personnel said they would return the next day and help finish the project; they were to take care of the fence debris removal on the Forest side of the fence; this has not been done; Forest Service personnel did not provide proper heavy wire clips for steel posts; 3 stays were used in the original fence; 2 stays were installed by Forest Service personnel; stays were put upside down, other stays left in piles; Appellant installed 3 stays on the portion of the fence he worked on; Forest Service personnel did not return to complete their portion of the fence as Appellant requested in a letter dated 11/2/02. The Forest Service makes a big deal about protecting the endangered minnow in the river and the District Ranger says a substandard fence is adequate to keep livestock out. Ed Holloway said on observing the fence, that it was adequate for now.

Response: Item 5(c) of the mediated agreement states: Miscellaneous materials will be kept on hand for the purpose of incidental fence maintenance, and in the event of re-construction needs, the Forest Service will participate (AR-3.0).

Finding: The Forest Service participated in fence reconstruction by providing materials, and contributing labor (AR 49.0). This effort meets the intent of Item 5(c) of the mediated agreement. However, the location of this fence needs to be reviewed. If the fence cannot be located in such a manner to avoid flood damage, no more materials or labor should be invested on this improvement.

Issue 33: Mesa fencing material

Contention: The Appellant contends that he was told there is no fencing material for the mesa fence; Forest Service crew abandoned a roll of wire and a shovel at the river fence site; they were to return and never came back; letter dated 11/2/02 informed them of the wire and shovel.

Response: This issue relates to a separate decision and appeal received from the Appellant (AR 56.0). The District Ranger withdrew this decision (AR 42.0). A new decision was made and documented to the Appellant in an agreement dated March 6, 2003 (AR 64.0). As a result, I dismissed the above appeal (reference appeal 03-03-06-0011-A25).

Finding: This issue is outside the scope of this appeal and has been previously addressed.

Issue 34: Disturbance to fence site

Contention: The Appellant contends that the removal of fence debris and reconstruction of the river fence created more ground disturbance than the very livestock it was constructed to keep out. Additionally, he contends the use of a tractor, 4-wheel drive trucks, pick axes, shovels and the dragging of logs disturbed a large area of ground; and that roads were created, and driven up and down the river, in the minnow habitat, to access the river fence project.

Response: On June 12, 2002, the District Ranger received a letter from the Appellant demanding, "that he build the fence along the San Francisco River." (AR 16.0). Because of resource concerns and the District Ranger's desire to resolve conflicts with the Appellant, the District Ranger decided to build the fence.

Finding: The effects of the fence project were temporary and of short duration in nature. The total length of the fence was less than one mile in length. Disturbance of the soil was limited to the immediate area adjacent the fence.

Issue 35: Effects of fence on private property

Contention: Appellant contends that after a flood destroyed the fence, an analysis was made. The fence is too close to the river; the trees cut down by the Forest Service fence crew between the fence and river washed into the fence; the resultant collection of cut trees and flood debris against the fence created a filter and barrier, resulting in a build up of silt behind the fence; the fence gave way to the flood, and the steel posts, wire and stays fell against the silt dam behind

the fence and created a very strong permanent barrier; the results of the barrier caused by the fence have changed the natural flow of the river; the barrier effectively created a deep channel of water flow. This water flow speeded up the water and created turbulence and a funneling of water that created more erosion; the River now has trees and debris in the natural flood plain; the WS Community Ditch has historically maintained the flood plane and levels to protect the WS ditch; the Appellant has been told to stop all activity in the river; the results of the trees and debris in the flood plain and the barrier, caused by the fence, has completely washed away all the soil in the area where the sand ditch was; the river is now leaving the historic and natural river channel and is cutting a deep channel into Appellant's private land creating a new river channel; the trees in the flood plain will grow bigger and collect more debris and further cause the river to create a new river channel through Appellant's private land; there is a need to have action on this problem before the possible spring snow-melt begins.

Response: On May 30, 2002, the Appellant was instructed that he had no authorization to construct a ditch from the San Francisco River to his private property (AR 13.0). After this date, we believe the Appellant went ahead and constructed this ditch. On July 17, 2002, U.S. Army Corps of Engineers issued a Cease and Desist Order instructing the Appellant not to perform any additional work, and requested a restoration plan (AR 30.0).

Finding: The unauthorized ditch is believed to have contributed to creating a new channel into the private property. The Corps of Engineers has requested a restoration plan from the Appellant (AR 31.2). In a letter, dated 9/3/02, instructions were given to the Appellant regarding the restoration work to be completed (AR 32.3). To date, this work has not been completed.

Issue 36: Access Road Maintenance

Contention: The Appellant contends that when the Forest Service built the fence in the river, they put the brace posts in the middle of his access road. After the holes were dug, they realized their mistake, but proceeded to set the post and brace in the middle of the Appellant's road. The brace and post were installed the middle of June 2002. The Appellant has written letters, and asked repeatedly, to be able to relocate the road so he can access the gate with his truck and trailer. The District Ranger has said, repeatedly, that he cannot maintain or relocate his road. The Ranger has said the road is in the endangered species critical habitat and will have to go through consultation. In a meeting with Marcia Andre on 9/17/02, the Appellant showed her the road and asked for permission to realign and maintain his road. At this meeting on 9/17/02, the District Ranger wanted to know what the problem was, because he had apologized for putting the post in the middle of the road. The Appellant had to inform the District Ranger that an apology does not maintain, or get his trailer through the road. Absolutely no action was taken to allow him to use the road. On 10/16/02, the Appellant asked Ed Holloway if he could realign the road; the District Ranger was not available at the time; Mr. Holloway said, that when Alan Graves came to work on the river fence on 10/21, he would have an answer for me. Alan Graves had no answer when he came to work. On 11/13/02, the Appellant once again asked Mr. Holloway if he (the Appellant) could maintain his road. The Appellant stated that it was a common sense answer, why should the Forest leave him a gate, if he cannot maintain the road. Mr. Holloway, at this time, told the Appellant to proceed with the realignment of the road.

Again, on 11/15/02, Mr. Holloway and biologist Ernie Taylor were on the river area. Mr. Taylor looked at the road alignment and said he could see no problem, since the road area is out of the river flood plain and on an upland slope. After over 6 months and no consultation, the Appellant was allowed to maintain his road. The District Ranger's decision was to cause the Appellant a hardship, and hoped that he (the Appellant) would do something in his frustration and anger that would give the Ranger reason to further malign the Appellant in the record.

Response: A gate was left in the fence, approximately 10 feet in width, offset from the existing road. This gate was sufficient to drive a pickup through. However, the gate was inadequate for a trailer (AR 16.1).

Finding: A decision was made, dated 11/18/02, authorizing the Appellant to maintain the road by moving rock and clearing some rabbit-brush (AR 57). This decision is consistent with Forest Service Policy and regulation.

Issue 37: Incidental Take statement

Contention: The Appellant contends that the District Ranger told him on 6/4/01 that he would not support an Incidental Take in the river. The District Ranger told him on 3/2/02 that he would now support an Incidental Take and would consult with the US Fish and Wildlife Service. A letter to the District Ranger on 7/11/02 asking for information about Incidental Take was unanswered. On 8/19/02, Appellant, through the FOIA process, asked that the contents of his letter be answered. Appellant finally got an answer on 8/23/02 and the main items of his letter were unanswered. Information to prove that the District Ranger did ask for an Incidental Take have been "suspiciously unanswered."

Response: The District Ranger and Forest Supervisor answered questions regarding Incidental Take in letters to the Appellant dated 8/23/02 and 10/18/02 (AR 31.0 and 47.1).

Finding: The District Ranger is not required to pursue a project that may result in adverse effects to endangered species. In this case, the District Ranger declined to pursue an alternative which would require an Incidental Take Statement. The rationale for this decision includes: 1) the requirement for formal consultation; 2) the possibility of additive effects leading up to a jeopardy opinion; 3) the presence of loach minnows in the effected area; and 4) the potential effectiveness of this project (AR 4.0, 31.0, and 47.1). The District Ranger's rationale and logic are clearly expressed. The District Ranger is affirmed on this issue.

Issue 38: Consultation involvement

Contention: Appellant asks in a letter dated 5/22/01 to be informed of all consultation meetings so that he can attend if he wants. He is fully permitted to attend all meetings; decisions have been forthcoming from consultation and he was never notified; the Incidental Take decision was done in consultation on 5/2/02 and he was never notified or invited.

Response: The Appellant has been involved in grazing consultation. On March 8, 2002, the Appellant was invited to attend a field trip with the USFWL (AR 5.1). On July 26, 2002, the Appellant attended a grazing consultation in Albuquerque, NM (AR 31.0). In order to request an Incidental Take statement, the Forest must complete a biological assessment. The District Ranger, on 8/23/02, informed the Appellant that, because of his concerns regarding additive effects, he chose not to pursue an alternative that would result in a likely to adversely affect determination. Therefore, grazing consultation was never initiated on the Appellant's proposal.

Finding: The District Ranger is not required to pursue a project that may result in adverse effects to endangered species. In this case, the District Ranger declined to pursue an alternative which would require an Incidental Take Statement. The rationale for this decision includes: 1) the requirement for formal consultation; 2) the possibility of additive effects, leading up to a jeopardy opinion; 3) the presence of loach minnows in the effected area; and 4) the potential effectiveness of this project (AR 4.0, 31.0, and 47.1). The District Ranger's rationale and logic are clearly expressed. The District Ranger is affirmed on this issue.

Issue 39: River fence

Contention: The Appellant contends that, in written minutes from a validation meeting on 1/10/02, the District Ranger said he would build and provide fencing material to fence off the Forest Service lands from the River Pasture. Additionally, he contends that the District Ranger specifically asked for his input into the design of the fence. The Appellant further contends, in a letter dated 6/12/02 to the District Ranger, that he asked the fence crew to stop by his house on the way to the fence project to pick up his plans for the fence. He also contends that he had given orders in the same letter for the Forest Service crew to access his private land from the East side and not the West side. The Appellant contends that the District Ranger and Ed Holloway blatantly disregarded his instruction and are in trespass and of total disregard for private property.

Response: See response under Issue 31. In addition, as per notes from Mr. Jerry Turner, the fence crew stopped by the Appellant's house prior to initiation of the fence construction project (AR 16.1).

Finding: The District Ranger provided materials and labor for the construction of this fence. In addition, the fence crew stopped by the Appellant's house prior to fence construction. The District Ranger is affirmed on this issue.

Issue 40: District Ranger

Contention: The Appellant claims that there are many times when the District Ranger is gone from the office for extended periods; he leaves to be on a fire crew or is on vacation and leaves nobody in charge to make decisions; the Appellant talked to Ed Holloway on one such occasion and needed an answer to a situation; Mr. Holloway was the acting ranger and would not make a decision; the Appellant informed Mr. Holloway that it is hard for others to proceed if there is

nobody in the office to make decisions; Mr. Holloway said he would make a decision, “I have decided to wait for District Ranger to return to make a decision”.

Response: District Rangers are not always available. During those times that the Ranger is absent, an Acting Ranger is left in charge. These folks are delegated authority to make most routine decisions. However, because of the sensitive nature of some decisions, the District Ranger often will ask the Acting to defer a decision until he or she returns.

Finding: Designation of an Acting Ranger is standard Forest Service practice. The Acting District Ranger may defer a decision, if he feels uncomfortable with that decision. Mr. Holloway elected to defer a decision, until the return of the District Ranger. The District Ranger is affirmed on this issue.

Issue 41: Special Use Pasture permit

Contention: The Appellant contends that he had his Special Use Pasture taken away along the highway and was told he could not use the pasture. The Appellant contends that the District Ranger said he would have to go through NEPA and consultation to use the pasture again; this was wrong information, and months later the District Ranger said he could use the pasture.

Response: The use of this pasture was not taken away. This piece of National Forest System land was incorporated into management of the allotment. In the 2002 AOP/I, dated March 12, 2002, the Appellant was instructed, “You are authorized to use the National Forest system land located between your private property and US Hwy 180 as an incidental holding pasture” (AR 6.0).

Finding: It is no longer Forest Service policy to issue special use permits for grazing. As per 36 CFR 222.3, unless otherwise specified by the Chief of the Forest Service, all grazing and livestock use on National Forest System lands, and on their lands under Forest Service control, must be authorized by a grazing or livestock use permit. Under Alternative 5 of the Cedar Breaks Environmental Analysis, the 32 acres of National Forest System land previously authorized by special use pasture permit will be incorporated into management of the allotment. The District Ranger is affirmed on this issue.

Issue 42: Ditch Rights

Contention: The Appellant contends that the District Ranger has taken away grazing along his ditch area on the north side of the river; the area is behind his levees and out of the flood plain; there has been no reason given why this area is to be ungrazed.

Response: In a letter to the Appellant, the Forest Supervisor stated, “If the ditch has not changed since National Forest reservation, no Forest authorization is necessary for the use of this ditch across lands administered by the Gila National Forest. However, the right to use and maintain this structure is limited to the ditch prism (AR 55.0).

Finding: This issue is outside the scope of this appeal review.

Issue 43: Name-calling

Contention: The Appellant alleges that the District Ranger in the Forest Service Office has called him and his wife liars.

Response: No information was provided to substantiate this allegation.

Finding: The Appellant provided insufficient information necessary to evaluate and rule on the merits of his claims.

Issue 44: Water lanes

Contention: The Appellant contends that he has requested a “water loop” in the river to water his livestock. Other allotments have as many as 4 water lanes. First request in a letter dated 7/11/02 went unanswered. Second letter, dated 8/19/02, the decision was delayed. In a letter from the District Ranger, the Ranger stated that the Appellant needed a hardened area of rock to allow a watering in the river. To find a hardened rock area in the water would seem to be impossible, the riverbed is a layer of silt or sand. The Appellant has observed water lanes on other allotments that have steel posts driven all the way across the river. This is just another situation that treats the Appellant differently from other allotment owners. The water he has requested will have no impact on the minnow. It is not located in the riffle or minnow habitat area. Furthermore, it has much less impact than a full water lane crossing the river.

Response: In a letter dated 8/28/02, the District Ranger replied that certain criteria were developed in the establishment of other water lanes (AR 32.0). These criteria included: a) a site to be located adjacent to a pool rather than a riffle; b) a site located in a hardened area, to avoid bank damage; and c) the amount of stream being fenced needed to be limited to 100 feet.

Finding: The District Ranger is not required to pursue a project that may result in adverse effects to endangered species. In this case, the District Ranger declined to pursue an alternative which would require an Incidental Take Statement. The rationale for this decision includes: 1) the requirement for formal consultation; 2) the possibility of additive effects, leading up to a jeopardy opinion (AR 31.0); 3) the presence of loach minnows in the effected area (AR 4.0); and 4) the potential effectiveness of this project. The District Ranger’s rationale and logic are clearly expressed. The District Ranger is affirmed on this issue.

Issue 45: Interactions with Forest Service employees

Contention: The Appellant contends that in talking to Forest Service employees, if they don’t like the question, they orchestrate their answers to be argumentative, which leads to anger; on

many occasions, after they get the Appellant angry, they get right in his face; it seems as if they want the Appellant to hit them and then action can be taken to suspend his grazing allotment. As an example, the Appellant alleges that he asked Ed Holloway why the AOP/I gives him instructions that he has to follow or he would get livestock reductions; the same document has instructions for Forest employees that they can change at will; the Appellant told Mr. Holloway that this was unfair and both parties should adhere to instructions on a document; Mr. Holloway said that this is the way the Forest Service works and if he didn't like it he could give his grazing permit to somebody else. They certainly know how to make an "allotment" owner angry.

Response: No information was provided to substantiate these issues. However, in the District Ranger's Responsive statement, Mr. Holloway claims he stated the following: "The Appellant could comply with the terms of his permit, or waive the permit" (AR 77.0). In a letter to the Appellant dated 10/9/02, the Deciding Officer documented his concerns regarding the Appellant's behavior toward his employees. The Deciding Officer stated "During the past several field reviews, employees have returned with reports of abusive language, name-calling and reports of arguments, disputing standards, and science, directed at them by you. Further, I recognized this as a very stressful time, and recognized that you perceive your very livelihood is at stake. I asked that if you have concerns, to please bring your concerns to me. However, it was inappropriate that my personnel be subjected to your abuse. If this continues, you will no longer be invited to participate in inspections" (AR 46.0).

Finding: Once the Annual Operating Plan/Instructions are implemented, these instructions become part of your Term Grazing Permit. Failure to comply with the instructions is a violation of the terms and conditions of your grazing permit, specifically Part 2, paragraph 8(a). Paragraph 8(a) states, "The allotment management plan for the land described on page 1, Part 1, is a part of this permit, and the permittee will carry out its provisions, other instructions, or both as issued by the Forest Officer in charge...". Part 1, section 3, of the Term Grazing Permit, states, "It is fully understood and agreed that this permit may be suspended or cancelled, in whole or in part, after written notice, for failure to comply with any of the terms and conditions specified in Parts 1, 2, and 3 hereof, or any of the regulations of the Secretary of Agriculture on which this permit is based, or the instructions of Forest officers issued there under...". By signing the Term Grazing Permit, the Appellant agreed to abide by all terms and conditions of the Term Grazing Permit. The Appellant signed the grazing permit on 3/11/96. The District Ranger is affirmed on this issue.

Issue 46: Communication

Contention: The Appellant contends that the District Ranger has sent letters taking action on his permit and then states that he is open to discussion about the situation; this is a futile statement in view of the fact that he has already taken action and further discussions are useless; discussions and solutions should be offered before action is taken.

Response: The record reveals that the District Ranger and his staff have met with the Appellant in the field, the office, and/or called him in an attempt to informally resolve non-compliance

issues with the Appellant. This documentation has been by letter, phone calls, personal visits, and field visits (1.0, 6.0, 8.0, 9.1, 34.0, 43.0, 44.0, 48.0, and 50.0).

When attempts to informally resolve an issue are not successful, a more formal procedure is initiated. This requires a Notice of Non-Compliance and initiation of permit action when the permit violation is not resolved.

Finding: The Deciding Official has made a reasonable attempt at communicating with the Appellant. The District Ranger is affirmed on this issue.

Issue 47: Lack of cooperation

Contention: The Appellant contends that he has made the Forest Supervisor aware of the conditions listed above; he has sent letters and documented events to Mrs. Andre seeking relief; Mrs. Andre came to his place on 9/17/02, at the request of the Regional Forester; Mrs. Andre, in a letter dated 10/18/02, agreed with some decisions made by the District Ranger and did not address other situations. Furthermore, the Appellant contends that Vic Jenkins has been present on many occasions with him and the present Forest Service Range Staff, and that Mr. Jenkins disagrees with the present monitoring and ideology. Mr. Jenkins would like to discuss the Appellant's situations with Forest Supervisor Andre and Steve Libby. Mr. Jenkins asked that a meeting be set up and possible solutions generated. A meeting was set up on 3/4/02 and later cancelled. Mrs. Andre then agreed to a meeting after finalization of the mediation process back in July. Steve Libby's answer to Vic Jenkins simply said there is another side to the story. Mr. Libby hasn't heard the Appellant's side of the story. The Appellant and others have continually offered to reach solutions through discussions. The Appellant also contends that through meetings with the Forest Supervisor and Steve Libby that they have continually offered to reach solutions through discussions. The above 47 items are listed to substantiate that decisions coming out of the Glenwood Ranger District are arbitrary and capricious. These items are also meant to show that the District Ranger has singled out the Appellant, and treats him differently from other allotment owners. The Appellant has tried to meet with the Regional Forester who referred him to the Forest Supervisor. Others and the Appellant have tried to meet with Steve Libby. It has become apparent that asking the Gila Forest Staff to meet, reverse, or otherwise find solutions to the District Ranger's demands are futile. The Appellant believes the Supervisor, and the directives they receive are anti-livestock and partly responsible for the actions that the District Ranger has taken.

Response: The record reveals there have been numerous attempts made to communicate and cooperate with the Appellant (AR 1.0, 4.0, 5.1, 8.0, 9.0, 9.1, 12.1, 13.0, 17.1, 23.0, 25.0, 25.1, 31.0, 31.1, 32.0, 32.1, 33.0, 34.0, 36.0, 37.0, 40.0, 42.0, 45.0, 46.0, 47.1, 48.0, 51.0, 63.0, and 64.0).

Finding: The Deciding Official, District staff, Forest Supervisor, Forest staff, and Regional Forester have made a reasonable effort to work with the Appellant.

Issue 48: 10/8/02 letter (AR 45.0)

Contention: The Appellant contends that Ed Holloway and Cindy McArthur did not make their analysis in the Community Pasture from a key area; the flat area is near where the Appellant feeds and waters his horses; and it is a travel lane his horses use to come and go through rest of the pasture; it is a narrow area between a cut bank and the highway fence; part of the area was flooded by hot asphalt when a tanker truck turned over; subsequent removal of the asphalt took the top layer of the soil off. Other parts of the pasture were not monitored. An average was not used to determine true use of the entire pasture. The Appellant has been on and observed many other Forest allotments and the same conditions exist as he has observed on his allotment. Namely, that the drought did leave some areas bare and there was grass loss.

Response: On 10/3/02, an inspection was completed on a portion of the Community Pasture (AR 43.0).

Finding: The portion of pasture inspected was not identified as a key area. However, unacceptable use and resource impacts were observed. The District Ranger was justified regarding his concern over the condition of this area. The District Ranger is affirmed on this issue.

Issue 49: 9/12/02 Notice of Non-Compliance letter

Contention: The Appellant contends that he knows of no allotments that have been besieged with non-compliance letters and action taken for the same reasons that he has. The non-compliance letter dated 9/12/02 did not specifically point out a particular situation in a particular pasture. The Appellant has not been trained in monitoring and it is unfair to hold him responsible for a standard he knows nothing about. Had he been informed about a particular pasture and been told to move, he could comply. The above referenced items 1 through 47 further elaborate on this situation.

Response: On September 12, 2002, a Notice of Non-Compliance letter was issued (AR 36.). The Notice of Non-Compliance letter states that, on August 8, 2002, Annual Operating Instructions were issued that limited forage use and directed that all livestock be moved into the Stout Mesa portion of the North Cedar Breaks Pasture. In the August 8, 2002, AOP, forage use was limited to 30% on key grass species (AR 25.0).

The Notice of Non-Compliance letter states on September 6 and 8, 2002, livestock were observed in the South Cedar Breaks pasture. In addition, excess forage utilization has been documented in the South Cedar Breaks pasture, in the Alma Flat area, based on an August 2, 2002, inspection report (AR 24.0).

In order to achieve compliance, the Appellant was instructed to remove all his cattle from the South Cedar Breaks Pasture by September 13, 2002, and follow the grazing schedule outlined in the Annual Operating Plan. In order to achieve compliance throughout the remainder of the 2002 grazing season, as well as in subsequent years, in reference to meeting utilization standard,

the Appellant must move his livestock out of a pasture before maximum use levels specified in his annual operating instructions are exceeded.

The Notice of Non-Compliance letter states, “The Appellant’s failure to remove all his cattle from the South Cedar Breaks Pasture by September 13, 2002, and follow the grazing schedule outlined in his Annual Operating Instructions will result in the initiation of permit suspension or cancellation proceedings. In addition, any subsequent violations of excessive utilization may result in permit suspension or cancellation.”

Finding: Notice of Non-Compliance letters have been issued for several allotments across the Gila National Forest. A permittee should be entitled to one Notice of Non-Compliance for specific violation(s) of grazing permit terms and conditions. However, once that initial notice is provided, the Forest Service is not required to issue additional Notices of Non-Compliance for subsequent violations of the same permit terms and conditions (even if they occur many years later). If violations of the Terms and Conditions of the grazing permit continue, administrative actions are taken. The District Ranger identified the violation of the Term Grazing Permit, provided the Appellant an opportunity to achieve compliance, and initiated action when violations were not corrected. These actions are consistent with Forest Service policy and direction as provided by FSM 2231.62 and FSH 2209.13, 16.2. The District Ranger is affirmed on this issue.

Issue 50: Unauthorized Use of the River

Contention: The Appellant contends the documented unauthorized use on 3/18, 5/23, 5/28 of the year 2002 and the subsequent Permit Action on June 5, 2002, have all been withdrawn.

Response: Previous violations of the Term Grazing Permit have not been withdrawn. These incidents are still part of the Record. The decision to cancel 5% and suspend 20% of the permitted numbers was withdrawn in light of the new decision to cancel 25% of permitted numbers (AR 45.0).

Finding: The previous incidents of non-compliance, as well as the recent violations, contributed to the current decision to cancel 25% of Term Permit numbers.

Issue 51: South Cedar Breaks Pasture, 6/17/02 inspection (AR 17.0)

Contention: Appellant questions how there could be unauthorized use in the South Cedar Breaks Pasture since he just came into the pasture on 6/10/02; Appellant contends that he was not invited to observe the monitoring; Appellant contends that cattle were moved into the South Cedar Breaks pasture as instructed by the District Ranger on 6/10/02. He was instructed that he could not use the River Pasture even though the fence was up in the river area. He contends that if he had been able to use the River Pasture, it would have delayed his move into the South Cedar Breaks Pasture and subsequent other pastures, allowing the North and South Cedar Breaks pastures more time to grow.

Response: The March 2002 AOI provided for cattle to be in the South Cedar Breaks Pasture from April 15 through June 15, 2002. Cattle were to have been removed by 6/15/02 (AR 6.0). On 6/17/02 an inspection was conducted on the South Cedar Breaks Pasture. This inspection documented cattle still in this pasture (AR 17.0). Information was passed on to the permittee for information purposes.

Finding: Once the Annual Operating Plan/Instructions are implemented, these instructions become part of the Term Grazing Permit. Failure to comply with the instructions is a violation of the terms and conditions of your grazing permit, specifically Part 2, paragraph 8(a). Paragraph 8(a) states, "The allotment management plan for the land described on page 1, Part 1, is a part of this permit, and the permittee will carry out its provisions, other instructions, or both as issued by the Forest Officer in charge...". Part 1, section 3, of the Term Grazing Permit, states, "It is fully understood and agreed that this permit may be suspended or cancelled, in whole or in part, after written notice, for failure to comply with any of the terms and conditions specified in Parts 1, 2, and 3 hereof, or any of the regulations of the Secretary of Agriculture on which this permit is based, or the instructions of Forest officers issued there under...". By signing the Term Grazing Permit, the Appellant agreed to abide by all terms and conditions of the Term Grazing Permit. The Appellant signed the grazing permit on 3/11/96.

Issue 52: River Pasture

Contention: The Appellant contends that he had reduced his numbers by 1/3 to lessen the impact. Again, key areas in the River Pasture were not used for monitoring; instead a no-growth area was used to determine over-use. There was a lot of green feed in the river and an adjacent area had plenty of feed. The River Pasture monitoring was wrong and unfair during this time of severe drought. It would hardly seem plausible that livestock in a pasture only 7 days could overutilize the pasture. The Appellant was given no notice to remove the livestock.

Response: On July 23, 2002, an inspection was completed on the River Pasture for the purpose of determining suitability of placing 20 head of cows on the pasture (AR 23.0). This report states, "Blue grama grass remaining from last year exhibits utilization levels in excess of 60% in the majority of the pasture. Use levels were estimated at 80% in the concentration areas." As a result, the request to use this pasture was denied.

In October, a request was made to use the River Pasture again. Based on some plant recovery occurring in this Pasture since July 23, 2002, the District amended the Appellant's AOP/I to permit use of this pasture with horses and bulls. However, the District Ranger articulated his concerns with approving the Appellant's request to graze the pasture (AR 51.0). He stated, "Vegetation condition data recorded in recent inspections reveals some improvement in the pasture. However, there definitely are still some concerns on portions of the pasture." The District Ranger identified four alternatives for grazing the pasture. The District Ranger then made an amendment to the Appellants AOP/I to permit him to utilize the River Pasture. However, this approval was contingent upon deterring any livestock use in the areas of concern illustrated on the attached map (AR 51.0). This area was described to the Appellant as an area of

concern, due to the use levels observed. In addition, it was stated that management in the pasture would hinge upon how well we can keep livestock out of the area of concern. This was articulated in the first page, last paragraph, and second sentence of document AR 51.0. It states, "livestock use in the area of concern (as illustrated on attached map, and identified to you on the ground), will not be allowed and you have agreed to check the area (at least twice a week) and remove any livestock found from the area." The October 23, 2002, monitoring report identifies forage production as very low in the area of concern, and that factors contributing to the low productivity of the site include current drought conditions, concentrated livestock use, erosive soil characteristics, and woody plant invasion" (AR 50.).

Finding: The District Ranger was justified regarding his concern over the condition of this area. The District Ranger is affirmed on this issue.

Issue 53: East CCC pasture, 7/2/02 inspection

Contention: The Appellant contends that livestock were not put into the East CCC pasture by him and that perhaps they migrated from another pasture or were found by his neighbors and deposited there, and, furthermore, they were removed by him as soon as he was notified.

Response: On 7/2/02, an inspection was conducted of the East CCC pasture. Five cows were observed in this pasture (AR 18.0). The 2002 AOI, dated March 12, 2002, provides for cattle to be in the East CCC pasture from July 15 through August 15 (AR 6.0).

Finding: Cattle were not authorized to be in the East CCC pasture until July 15, 2002.

Issue 54: West CCC pasture, 7/15/02 inspection

Contention: The Appellant contends that livestock were not put in the pasture by him and that he never found tracks or animals in this pasture, and perhaps a neighbor's cow walked the cattleguard at the north end.

Response: On 7/15/02, an inspection was conducted of the West CCC pasture. Four cows were observed in this pasture (AR 22.0). The 2002 AOI, dated March 12, 2002, provides for cattle to be in the West CCC pasture from August 15 through October 15 (AR 6.0).

Finding: Cattle were not authorized to be in the West CCC pasture until August 15, 2002.

Issue 55: South Cedar Breaks Pasture, 8/1/02

Contention: The Appellant contends that he was not invited to attend the monitoring in this pasture, and that he moved livestock from the South Cedar Breaks Pasture to the North Cedar Breaks Pasture on 8/4/02. He further contends that monitoring was done at the wrong time, and that monitoring during the growing season does not give a true picture because it does not reflect

the total plant growth during the growing cycle. Later monitoring had shown this to be true. Furthermore, he contends that the monitoring was done only in areas accessible by truck in the flat areas. The flat areas are located next to the highway and the rainfall was lower in this area. Appellant contends that most of the livestock were located at the Murphy tank, New tank, and New Road tank. Water was also available in potholes in the canyon bottoms off the flat. At the time the Appellant was told to move his livestock out of the South Cedar Breaks Pasture, there was plenty of feed in these areas. The Appellant contends that he moved the livestock as instructed even though there was strong feed, and that, had proper monitoring been done, he could have removed only the livestock in the flat and left the other livestock. He contends that he has pictures that reflect that feed was available in the flats as well.

Response: On 8/1/02, an inspection was conducted on the South Cedar Breaks Pasture. The Appellant was not invited to attend. The results of the monitoring indicated a need to amend the AOP/I (AR 24.0). On 8/8/02, an amendment was made to move cattle from the South Cedar Breaks Pasture to North Cedar Breaks Pasture (AR 25.0)

Finding: Adjustments of Annual Operating Plan/Instructions, due to observed utilization, is reasonable and consistent with Forest Service Policy. The District Ranger is affirmed on this issue.

Issue 56: 9/3/02 and 9/4/02 utilization standards exceeded in the North Cedar Breaks Pasture

Contention: The Appellant contends that he was not invited to observe the monitoring in this pasture and that, similar to the above that he had plenty of feed in the foothills and on the north slope of Stout Mesa. In addition, the Appellant contends that heavy rains started on 9/9/02 and this rain brought on grass growth throughout all of his pastures. This further proves the inaccuracy of doing monitoring during the growing season. Furthermore, the Appellant contends that the District Ranger gave him orders to remove all livestock from the North Cedar Breaks Pasture by 9/13/02, which was impossible because of the huge flood in the river, and that they could not cross their cows until 9/18/02.

Response: Inspections were conducted on the West CCC, East CCC, and North Cedar Breaks (Stout Mesa) on September 3 and 4, 2002. The inspection documentation indicates that the Appellant was invited. Inspections revealed that cattle had grazed uniformly across Stout Mesa, and utilization levels had been exceeded in the North Cedar Breaks Pasture (AR 33.0). As a result of these inspections, an amendment to the Annual Operating Plan/Instructions was completed on September 13, 2002. This AOI estimated the capacity for the West CCC pasture at a total of 110 AM, or 54 head for two months (AR 37.0). However, as per the Appellant's request, the AOI was amended on September 19, 2002, to go into the East CCC pasture (AR 40.).

Finding: Adjustments of Annual Operating Plan/Instructions, due to observed utilization, permittee requests, or forage conditions, is reasonable and consistent with Forest Service Policy. The District Ranger is affirmed on this issue.

Issue 57: 9/3, 4, 6/02 unauthorized use in the South Cedar Breaks Pasture

Contention: The Appellant contends that he had gone to Houston to visit his sister and was told not to worry about cattle moves until he came back. After coming back on 9/8/02, he proceeded to locate livestock in the wet and muddy conditions, finally located livestock on 9/13/02, and moved them out of the South Cedar Breaks Pasture as instructed. He further contends that the livestock either got through the fence or were missed during the prior move.

Response: On September 6 and 8, 2002, livestock were observed in the South Cedar Breaks Pasture. The 2002 AOI, dated March 12, 2002, provides for cattle to be in the South Cedar Breaks Pasture from November 15 through January 15 (AR 6.0).

Finding: Cattle were not authorized to be in the South Cedar Breaks Pasture.

Issue 58: Stout Mesa portion of North Cedar Breaks pasture

Contention: The Appellant contends that asking him to keep livestock in the east end of the pasture on Stout Mesa was impossible and that he can only remove them from the west end of the pasture as they come into the area. Furthermore, he contends that only a few livestock came into the flats in the western portion of the pasture and that he felt he had great success in keeping livestock out of that area.

Response: On August 8, 2002, an AOP/I amendment was initiated permitting the Appellant to graze his livestock on the Stout Mesa portion of the North Cedar Breaks Pasture. However, because of the lack of forage in remaining portions of this pasture, the Appellant was instructed to utilize management practices that would encourage livestock use in the Stout Mesa area (AR 25.0).

Finding: In order to achieve proper distribution, this was a reasonable request by the District Ranger. The District Ranger is affirmed on this issue.

Issue 59: Original AOP/I dated March 12, 2002 (AR 6.0)

Contention: The Appellant contends that the original AOP/I scheduled him to move cattle into the West CCC Pasture August 15 through October 15, and that the District Ranger has accused him of violating this AOP/I. Appellant contends that the District Ranger failed to recognize that his letter of 8/8/02 gave him instructions different from the original AOP/I. Furthermore, he contends that the letter said he was to be in the North Cedar Breaks Pasture from 8/1/02 until 9/1/02. He also contends that the content of the letter was appealed and that he prevailed in that appeal.

Appellant contends holding him accountable to the 3/12/02 APO/I is redundant. There have been many changes to the March AOP/I since March 12, 2002. The District Ranger's own change on 8/8/02 amended the previous AOP/I. The Appellant moved cattle from South Cedar

Breaks to North Cedar Breaks on 8/4/02 as ordered by the District Ranger. The District Ranger then ordered him to move cattle from North Cedar Breaks to East CCC by 9/13/02. When cattle moves are delayed through the AOP/I, it changes the whole sequence of livestock moves in the future. In the same letter dated 9/13/02, the District Ranger is sending Appellant opposite messages. The District Ranger says that the Appellant should be adhering to the 8/15/02 move, and, at the same time, is telling him to make the same move by 9/13/02. Furthermore, Appellant contends that cattle moves demanded in the 9/13/02 letter have since been changed to reflect the now abundant feed found in the East CCC Pasture, and that feed has also been found in the South and North Cedar Breaks Pastures according to recent monitoring. This is indifferent to statements in the 9/13/02 letter.

Response: On March 12, 2002, the AOP/I was developed for the Cedar Breaks allotment (AR 6.0). These instructions provided for cattle to be grazed according to the schedule. On March 12, 2002, an amendment was issued, extending the use in the West CCC Pasture until March 31, 2002 (AR 7.0). On August 8, 2002, a second amendment was issued, to allow cattle to remain in the North Cedar Breaks Pasture until 9/1/02 (AR 25.0). On 9/13/02, a third amendment was issued, providing for cattle to move into the West CCC pasture as per the original schedule until 10/15/02 (AR 37.0). On September 19, 2002, a fourth amendment was issued, providing for cattle to move into the East CCC pasture, rather than the West CCC pasture, until 11/3/02, and then the West CCC pasture until 2/28/03 (AR 40.). The history of the AOP/I and amendments are displayed in Table 1.

Table 1
APO/I History

* Denotes amendment

Pasture	3/08/02-AOP AR 6.0	* 3/12/02 AR 7.0	* 8/8/02 AR 25.0	* 9/13/02 AR 37.0	* 9/19/02 AR 40.0	* 10/25/02 AR 51.0
West CCC	2/1/02-3/15/02 8/15/02- 10/15/02	2/1/02-3/31/02		9/15/02-10/15/02	11/4/02-2/28/03	
East CCC	3/15/02-4/15/02 7/15/02-8/15/02 10/15/02- 11/15/02				9/19/02-11/3/02	
South Cedar Breaks	4/15/02-6/15/02 11/15/02- 1/15/03					
North Cedar Breaks	6/15/02-7/15/02 1/15/03-2/28/03		8/1/02-9/1/02			
New River Pasture						Horse and bulls - 10/24- 2/28/03
Wiley Morgan	Pending- Horses/Bulls					
House	Incidental Use- horses/cattle					
Community	As needed- Horses					

Finding: The District Ranger has been working with the Appellant to adjust management, based on changing forage conditions, and distribution patterns. Changes in the Annual Operating Plan, have been documented and communicated to the Appellant. Once the Annual Operating Plan/Instructions are implemented, these instructions become part of the Term Grazing Permit. Failure to comply with the instructions is a violation of the terms and conditions of the grazing permit, specifically Part 2, paragraph 8(a). Paragraph 8(a) states, “The allotment management plan for the land described on page 1, Part 1, is a part of this permit, and the permittee will carry out its provisions, other instructions, or both as issued by the Forest Officer in charge...”. Part 1, section 3, of the Term Grazing Permit, states, “It is fully understood and agreed that this permit may be suspended or cancelled, in whole or in part, after written notice, for failure to comply with any of the terms and conditions specified in Parts 1, 2, and 3 hereof, or any of the regulations of the Secretary of Agriculture on which this permit is based, or the instructions of Forest officers issued there under...”. By signing the Term Grazing Permit, the Appellant agreed to abide by all terms and conditions of the Term Grazing Permit. The Appellant signed the grazing permit on 3/11/96. The District Ranger is affirmed on this issue.

Issue 60: Compliance

Contention: The Appellant contends that he has tried to comply with every demand to move livestock as directed by the District Ranger

Response: There have been numerous incidents by the Appellant of not complying with the Terms and Conditions of his grazing permit (AR 1.0, 9.1, 10.0, 11.0, 12.0, 13.0, 14.0, 22.0, 23.0, 24.0, 33.0, 34.0, 36.0, 37.0, 38.0, 40.0, 42.0, 43.0, 44.0, 45.0).

Finding: The District Ranger identified the violations of the Term Grazing Permit, provided the Appellant an opportunity to achieve compliance, and initiated action when violations were not corrected. These actions are consistent with Forest Service policy and direction as provided by FSM 2231.62 and FSH 2209.13, 16.2. The District Ranger is affirmed on this issue.

Issue 61: Monitoring

Contention: Appellant contends he is held accountable for monitoring that he has not been trained for. Appellant contends that he has not accepted the responsibility of doing monitoring. Appellant contends stubble height monitoring should not be acceptable until the method is fully accepted in the NEPA decision notice.

Response: The Appellant has been invited or has directly participated in monitoring on several occasions (AR 12.0, 23.0, 33.0, 43.0, 44.0, 48.0, 50.0, 71.0 and 72.0). In addition, on 1/28/03, the Glenwood Ranger District and Range Improvement Task Force (RITF) hosted a monitoring workshop on the Cedar Breaks allotment. The purpose of this workshop was to review a methodology developed by the Glenwood Ranger District and reviewed by Dr. Holechek to implement monitoring on the Cedar Breaks allotment (AR 69.0). The Appellant, Range

Improvement Task Force, New Mexico Department of Agriculture, and Forest Service participated in this workshop (AR 70.0).

Utilization standards are identified within the Annual Operating Plan/Instructions. Once implemented, these instructions become part of your Term Grazing Permit. Failure to comply with utilization standards is a violation of the terms and conditions of your grazing permit, specifically Part 2, paragraph 8(a). Paragraph 8(a) states, "The allotment management plan for the land described on page 1, Part 1, is a part of this permit, and the permittee will carry out its provisions, other instructions, or both as issued by the Forest Officer in charge...". Part 1, section 3, of the Term Grazing Permit, states, "It is fully understood and agreed that this permit may be suspended or cancelled, in whole or in part, after written notice, for failure to comply with any of the terms and conditions specified in Parts 1, 2, and 3 hereof, or any of the regulations of the Secretary of Agriculture on which this permit is based, or the instructions of Forest officers issued there under...". By signing the Term Grazing Permit, the Appellant agreed to abide by all terms and conditions of the Term Grazing Permit. The Appellant signed the grazing permit on 3/11/96.

Finding: Training has been provided and the monitoring method has been reviewed by the RITF and New Mexico Department of Agriculture (NMDA). However, ultimately, it is the Appellant's responsibility to be aware of what is happening on the allotment, and to ensure that violations of the Term Grazing Permit do not occur. The District Ranger is affirmed on this issue.

Issue 62: Monitoring

Contention: Appellant contends the methods and procedures for monitoring should not be implemented until there is collaboration between Vic Jenkins, himself, and the Forest Service.

Response: The Appellant has been invited, or has directly participated in monitoring, on several occasions (AR 12.0, 23.0, 33.0, 43.0, 44.0, 48.0, 50.0, 71.0 and 72.0). In addition, on 1/28/03, the Glenwood Ranger District and Range Improvement Task Force hosted a monitoring workshop on the Cedar Breaks allotment. The purpose of this workshop was to review a methodology developed by the Glenwood Ranger District and reviewed by Dr. Holechek to implement monitoring on the Cedar Breaks allotment (AR 69.0). The Appellant, Range Improvement Task Force, New Mexico Department of Agriculture, and Forest Service participated in this workshop (AR 70.0).

Finding: The Forest Service is required to monitor each active allotment. The Appellant has repeatedly observed and participated in monitoring forage use of his allotment (AR 33.0, 43.0, 44.0, 48.0, 50.0, 71.0, 72.0, 73.0, and 74.0). The Forest Service has collaborated with the Appellant, New Mexico Department of Agriculture, Range Improvement Task Force, and Dr. Jerry Holechek regarding monitoring methods, collection of data, and monitoring standards. The District Ranger is affirmed on this issue.

Issue 63: Monitoring

Contention: Appellant contends that using drought conditions and areas where no growth has occurred in places as an implement to reduce livestock is wrong.

Response: The Forest Service requires monitoring on each active allotment. The Appellant has repeatedly observed and participated in monitoring forage use of his allotment (AR 23.0, 33.0, 43.0, 44.0, 48.0, 50.0, 71.0, 72.0).

Finding: Monitoring can be described as the gathering of sufficient information so that the land manager knows what is happening to rangeland resources and why it is happening. Monitoring is an essential aspect of good rangeland management. The District Ranger is affirmed on this issue.

Issue 64: Monitoring

Contention: Appellant contends that range monitoring in the East CCC Pasture that leads to the finding of no feed when there was abundant feed points to something wrong with the whole system.

Response: On September 3, 2002, a monitoring inspection was conducted on the West and East CCC Pastures. For the East CCC Pasture, leaf lengths of Blue grama were identified as 2-3 inches. In addition, this inspection identified this pasture as having not received much rain and many plants were drying out before completing their growth cycle (AR 33.0).

Finding: The monitoring report indicated a lack of water and “drying out” of feed. It did not indicate that no feed existed. The District Ranger is affirmed on this issue.

Issue 65: Unreasonable time frames to move cattle

Contention: The District Ranger at times has given Appellant one day to move livestock. It is unjust for the Ranger to knowingly impose an impossible burden on him and then use this information to threaten a suspension or cancellation of his grazing permit.

Response: On August 29, 2002, the Appellant called the District Ranger to determine if he could stay in the North Cedar Breaks Pasture, because he thought there was a mistake. This was one day prior to cattle being moved as scheduled. The Appellant was permitted to remain through the Labor Day weekend in order to provide the District an opportunity to inspect the pasture. On September 3, 2002, the North Cedar Breaks Pasture was inspected and the District determined that cattle should be removed immediately. A summary of these events is included in the September 13, 2002, AOP/I amendment (AR 37.0).

Finding: The Appellant was aware that a scheduled move was imminent. The District Ranger is affirmed on this issue.

Issue 66: Arbitrary and Capricious

Contention: Appellant feels that the District Ranger is doing things just to aggravate him, to show him as dishonest, uncooperative, and distrustful.

Response: The decision and rationale for withdrawing the June 5, 2002, decision and making a new decision to cancel 25% of Term Permit numbers was based on continued violations of the Terms and Conditions of the Term Grazing Permit. These violations were identified and communicated to the Appellant, in letters dated May 15, 2001, April 1, 2002, May 24, 2002, May 30, 2002, June 5, 2002, September 12, 2002, September 13, 2002, and October 8, 2002 (AR 1.0, 9.1, 11.0, 13.0, 14.0, 36.0, 37.0, and 45.0).

The Appellant was provided appeal rights and was granted an automatic stay pending the outcome of the administrative appeal process (45.0, and 58.1)

Finding: The District Ranger identified the violation of the Term Grazing Permit, provided the Appellant an opportunity to achieve compliance, and initiated action when violations were not corrected. These actions are consistent with Forest Service policy and direction as provided by FSM 2231.62 and FSH 2209.13, 16.2. The District Ranger is affirmed on this issue.

The following issues were raised during the oral hearing (AR 83.0)**Document dated 6/16/03**

Issue 67: Extension of appeal period

Contention: Appellant requested additional time to respond to this appeal

Response: On April 11, 2003, I informed you of the due date for comments on the District Ranger's responsive statement. This date was identified as April 25, 2003. I also encouraged you to schedule an appointment for your oral hearing (AR 78.0). On April 18, 2003, you requested an extension, to be set after the end of May, to submit your comments (AR 79.0). On April 25, 2003, I granted you an extension, through June 1, 2003 (AR 80.0). On May 29, 2003, you requested an additional extension of time to prepare your comments and schedule your oral hearing (AR 81.0). On June 2, 2003, I granted you an extension through June 16, 2003 (AR 82.0).

Finding: As per 36 CFR 251.94(c), within 20 days of the postmarked date of the responsive statement, the Appellant(s) and any interveners(s) may file a written reply to the responsive statement with the Reviewing Officer. You were provided two extensions and a total of 73 days to submit your comments on the District Ranger's Responsive statement. I find that your requests for additional time were reasonably met, and that you were allowed significantly more time than provided for in the 36 CFR 251 appeal regulations.

Issue 68: Previous Appeals

Contention: Appellant requests the following appeals be included in his response: Appeal # 03-03-06-0011-A251, Appeal # 02-03-06-0012-A251, and Appeal # 03-03-06-0004-A251.

Response: My review and decision relates to the appeal you filed on November 16, 2002. This appeal is 03-03-06-0010-A251.

Finding: The above appeals are outside the scope of this decision.

Issue 69: Monitoring, Items 1-15

Contention: Appellant contends there has never been a collaborative process for stubble height monitoring. Appellant contends the Forest Service has its own method; it does not follow the Holechek/Galt method. Appellant raises several issues with the monitoring that he has observed.

Response: The Appellant has been invited or has directly participated in monitoring on several occasions (AR 12.0, 23.0, 33.0, 43.0, 44.0, 48.0, 50.0, 71.0 and 72.0). In addition, on 1/28/03, the Glenwood Ranger District and Range Improvement Task Force hosted a monitoring workshop on the Cedar Breaks allotment. The purpose of this workshop was to review a methodology developed by the Glenwood Ranger District and reviewed by Dr. Holechek to implement monitoring on the Cedar Breaks allotment (AR 69.0). The Appellant, Range Improvement Task Force, New Mexico Department of Agriculture, and Forest Service participated in this workshop (AR 70.0).

Finding: The methodology that the Glenwood Ranger District is utilizing to conduct monitoring has been reviewed by the Appellant, Range Improvement Task Force (RITF), New Mexico Department of Agriculture (NMDA) , and Dr. Jerry Holechek.

The District Ranger and his staff have collaborated with the Appellant, NMDA, and RITF in hosting training sessions, establishing key areas, and collecting monitoring information. See responses under Issues 05, 4, 6, 17, 18, 20, 24, 25, 26, 27, 48, 51, 55, 56, 61, 62, 63 and related responses contained within this review. The District Ranger is affirmed on this issue.

Issue 70: Cattle Moves, Items 1-2

Contention: The Appellant claims that he has continually asked where to move his cattle and could not get an answer. Appellant claims the District Ranger demands that cattle are removed immediately, or face permit action.

Response: These issues have been previously addressed.

Finding: See responses under Issues 1, 2, 14, 15, 16, 22, 23 and related responses contained within this review. The District Ranger is affirmed on this is sue.

Issue 71: Fencing Issues, Items 1-5

Contention: Appellant disputes the District Ranger’s statement that the fencing crew stopped by his house. Appellant did not grant permission for the crew to access the fence from the west side. Appellant claims he was to be provided two cattle-guards; no permit modification has been provided.

Response: These issues have been previously addressed.

Finding: See responses under Issues 10, 28, 29, 30, 31, 32, 33, 35, 36, 39 and related responses contained within this review. The District Ranger is affirmed on this issue.

Issue 72: Lack of Experience and Knowledge by District Ranger, Items 1-11

Contention: Appellant raises issues with the District Ranger’s Responsive Statement. Appellant claims he cannot control his cattle the way the District Ranger wants him to. Appellant claims the District Ranger gets angry. Appellant claims that there has been continued wrong information given to the Regional Forester, Jerry Holechek, and other people in Glenwood. Appellant disputes the decisions made regarding management of cattle. Appellant disputes the District Ranger’s documentation of meetings.

Response: These issues have been previously addressed.

Finding: See responses under Issues 1, 3, 5, 12, 23, 30, 41, 44, 45, 46, 47 and related responses contained within this review. The District Ranger is affirmed on this issue.

Issue 73: Conclusion

Contention: Appellant takes exception to all statements by the District Ranger as being distorted and giving misinformation. Appellant claims he has been singled out by the District Ranger, Stephen Libby, Ed Holloway, Cindy McArthur, and the Forest Supervisor. Appellant claims the District Ranger is reluctant to honor the “Hage” case. Appellant claims the District Ranger has taken complete control of his livestock operation and demands compliance. Appellant claims other allotments are suffering under the District Rangers inexperience and arbitrary and capricious demands. Appellant claims he could have run another 30 head of cattle had his pastures been properly managed. Appellant claims this points to an agenda by the Forest Service to eliminate all grazing in the area.

Response: These issues have been previously addressed.

Finding: See all previous responses contained within this review.

Document dated 9/17/02

Issue 74: Incidental Take Statement

Contention: The Appellant asks for an Incidental Take Statement,

Response: This issue has been previously addressed.

Finding: See response under Issue 37.0 and 38.0

Issue 75: Water loop in the river

Contention: Appellant asks for a water lane to be built in the river.

Response: This issue has been previously addressed.

Finding: See response under Issue 44.0

Issue 76: Road maintenance

Contention: Appellant claims he has been denied the right to maintain his road.

Response: This issue has been previously addressed.

Finding: See response under Issue 36.

Issue 77: Irrigated land located on National Forest

Contention: The Appellant claims he has been informed to cease and desist from any activity on Forest Service lands and that he has been denied the right to graze part of his grazing allotment.

Response: This issue relates to the WS Ditch and irrigated fields located on National Forest land (AR 17.1).

Finding: This issue is outside the scope of this review.

Issue 78: Ditch

Contention: Appellant claims his right to maintain his concrete irrigation ditch by grazing has been denied:

Response: This issue has been previously addressed.

Finding: See response under Issue 42.

Issue 79: River Fencing

Contention: Appellant claims that he has requested to build a fence at his own expense on the north side of the river. He wishes to exclude his irrigation ditch, road and levees. This would allow him to graze his ditch and all areas behind the levees. The Ranger has denied him the right to graze this area.

Response: See response under Issue 42. Fencing the irrigation ditch would not resolve the issue of livestock accessing National Forest Lands on the San Francisco River. Because this issue was unresolved, the District Ranger decided not to pursue this alternative.

Finding: This issue is outside the scope of this review.

Issue 80: Monitoring

Contention: Appellant claims that he was told by the District Ranger that he had no feed in 3 pastures and only 30 days feed in the West CCC pasture and that this was proven wrong.

Response: This issue has been previously addressed.

Finding: See response under Issue 17, 18, 20, 26, 27 and related responses contained within this review.

Document dated 11/14/02

Issue 81: History of Upland Cedar Breaks project, Items 1-6

Contention: Appellant raises issues with the Cedar Breaks Upland juniper treatment project.

Response: The Cedar Breaks Upland project relates to a separate decision.

Finding: The Cedar Breaks Upland project is outside the scope of this appeal.

Issue 82: River fence, Item 7

Contention: Appellant contends Forest Service was supposed to participate.

Response: This issue has been previously addressed.

Finding: See responses under Issues 10, 28, 29, 30, 31, 32, 34, 35, 36, 39 and related responses contained within this review.

Issue 83: Movement of Cattle.

Contention: Appellant contends he has been given unreasonable direction by the District Ranger to move cattle in one day.

Response: This issue has been previously addressed.

Finding: See responses under Issues 1, 2, 14, 15, 16, 22, 23 and related responses contained within this review.

Issue 84: Forest Service personnel

Contention: Appellant claims the Forest Supervisor berated him; the Appellant has not received information from the District Ranger; the District Ranger “got in his face.” The Appellant claims that the Forest Supervisor accused him of being insincere. Appellant claims that there is a “team effort” to target him. Appellant does not want the Forest Supervisor to come out or attempt to solve any more problems.

Response: No evidence to support this claim was provided.

Finding: See responses under Issues 12, 13, 21, 38, 43, 45, 46, 47, 66 and related responses contained within this review.

Document dated 6/5/03

Issue 85: South Cedar Breaks pasture

Contention: Appellant claims something was wrong with the monitoring because we had just put the cattle into the pasture.

Response: This issue has been previously addressed.

Finding: See response under Issues 27, 51, 55, 57, 59 and related responses contained within this review.

Document dated 6/12/02

Issue 86: River Fence

Contention: Appellant demands that the District Ranger abide by the mediated agreement.

Response: This issue has been previously addressed.

Finding. See responses under Issues 10, 28, 29, 30, 31, 32, 34, 35, 36, 39 and related responses contained within this review.

Document dated 6/30/2002

Issue 87: NEPA

Contention: Appellant raises issues with the District Ranger's proposal to implement a seasonal grazing decision, planning meetings, and IDT meetings.

Response: This issue relates to a separate appeal (03-03-06-0004-A251). My review and decision relates to the appeal you filed on November 16, 2002. This is appeal 03-03-06-0010-A251.

Finding: This issue is outside the scope of this decision.

Issue 88: Water loop in the river

Contention: Appellant asks for a water lane to be built in the river.

Response: This issue has been previously addressed.

Finding: See response under Issue 44 and related responses contained within this review.

Issue 89: Action letter suspending 20% of Term Permit numbers

Contention: Appellant claims he could not understand why this action was taken.

Response: This decision relates to a separate issue and appeal. This decision was successfully mediated and the appeal record closed.

Finding: This issue is outside the scope of this decision.

Issue 90: Mediation

Contention: Appellant contends that the contents of mediation changed from one day to the next and that the terms of the mediation could not be implemented.

Response: This issue relates to a separate decision and appeal. The appeal record for that decision has been closed.

Finding: This issue is outside the scope of this review.

Issue 91: Reasons for excluding cattle from the river

Contention: Appellant disagrees with the reasons that have been provided by the District Ranger for not permitting cattle grazing in the river.

Response: This issue has been previously addressed.

Finding: See related responses under Issue 37 and related responses contained within this review.

Issue 92: AOI signature

Contention: Appellant claims the District Ranger required the Appellant to sign the AOI and then later recanted this requirement.

Response: This issue has been previously addressed.

Finding: See response under Issue 03 and related responses contained within this review.

Issue 93: NEPA planning

Contention: Appellant contends the District Ranger accused the Appellant of illegally taping an IDT team meeting; the District Ranger missed an important meeting with the Appellant and others regarding future management of the Cedar Breaks allotment. Appellant disputes alleged statements made by the District Ranger, regarding the Appellant's ability to manage cattle.

Response: This issue relates to a separate appeal (03-03-06-0004-A251). My review and decision relates to the appeal you filed on November 16, 2002. This is appeal 03-03-06-0010-A251.

Finding: This issue is outside the scope of this decision.

Issue 94, 95, and 96: Cattle in the River Pasture

Contention: The Appellant claims that the District Ranger authorized incidental use of the River Pasture.

Response: This issue has been previously addressed.

Finding: See previous responses under Issues 01, 5, 7, 8, 9, 11, 13, 14, 19, 37, 49, 50 and related responses contained within this review.

Issue 97: Arbitrary and Capricious behavior

Contention: Appellant claims there is a pattern of the District Ranger saying things and then taking different action. Appellant claims that he has tried to abide by the District Ranger's instructions, but finds it impossible. Appellant claims that he has never done anything to put his permit in jeopardy. At this time of drought, the Appellant claims that he sees no compassion or human caring being demonstrated by the Glenwood District.

Response: This issue has been previously addressed.

Finding: See all previous responses contained within this review.

DECISION

My review of your appeal was conducted in accordance with 36 CFR 251 Subpart C. After a review of the appeal record, I find that the District Ranger's October 8, 2002, decision to cancel 25% of your Term Grazing Permit numbers was in conformance with applicable laws, regulations, policies and procedures. The District Ranger identified the violation of the Term Grazing Permit, provided you an opportunity to achieve compliance, and initiated action when violations were not corrected. These actions are consistent with Forest Service policy and direction as provided by FSM 2231.62 and FSH 2209.13, 16.2.

Therefore, I affirm the District Ranger's decision. Your request to have the 25% reduction in Term Grazing Permit numbers reinstated and those documents that led to the decision stricken from the record is denied.

According to the appeal regulations (36 CFR 251.87), you may file an appeal to the Regional Forester within 15 days of this decision. The second level appeal must be sent to:

Regional Forester
USDA Forest Service
Southwestern Region
333 Broadway SE
Albuquerque, New Mexico 87102

A copy of the second level appeal should be sent to my office.

Sincerely,

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

Enclosure

cc:

Appeals and Litigation, USDA Forest Service, Southwestern Region
Mr. Lee E. Peters (Certified Mail, Return Receipt Requested 7002 20030 0005 8833 8603)
District Ranger, Glenwood Ranger District