



United States  
Department of  
Agriculture

Forest  
Service

Southwestern  
Region

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File Code: 1570-1

Date: August 28, 1998

Karen Budd-Falen  
c/o Roger T. Williams  
Budd-Falen Law Office, PC  
623 West 20th Street  
P.O. Box 346  
Cheyenne, WY 82003-0346

Certified Mail - Return Receipt Requested  
Z 095 964 477

Re: Appeal and Request for Stay for Glen McCarty (Appeal #98-03-06-0009-A215)

Dear Mr. Williams:

On July 1, 1998, you filed an appeal and request for stay with the Forest Supervisor of the Gila National Forest concerning a May 14, 1998, decision made by District Ranger Jerry Hibbetts, Luna Ranger District, Gila NF. The Forest Supervisor ruled on the appeal and stay-by letter dated July 13, 1998. Upon review of the Forest Supervisor's letter, your appeal, and the decision document, I have concluded that your appeal was not processed consistent with Forest Service regulations and policy.

The nature of the decision that you appealed is a National Environmental Policy Act (NEPA) decision and, therefore, subject to 36 CFR 215 regulations. The basis for your appeal and stay request is related to administrative decisions involving actions associated with administration of permits which are covered under 36 CFR 251 appeal regulations. Mr. McCarty's opportunity to appeal administration of his permit (Annual Operating Plan) under 36 CFR 251 ended on April 20, 1998. The 36 CFR 251 regulations do not apply to NEPA decisions.

Appeals of NEPA decisions made by a Forest Supervisor or District Ranger are subject to Regional Forester review (36 CFR 215.12). In this case, the Forest Supervisor improperly processed your appeal. Therefore, I will now address your appeal of the NEPA decision under 36 CFR 215.

The NEPA decision made by Ranger Hibbetts is consistent with 40 CFR 1508.4 (Categorical Exclusion) and FSH 1909.15. The decision approved an action that individually or cumulatively does not have a significant effect on the human environment and, therefore, meets two of the categories (#6 and #7) for which the project can be excluded from documentation in an environmental assessment (EA) or environmental impact statement (EIS). Pursuant to 36 CFR 215.8(a)(4), decisions made that can be categorically excluded from documentation in an EA or EIS are not appealable decisions under the 36 CFR 215 appeal regulations.

Pursuant to 36 CFR 215.15(b), I am dismissing your appeal on the grounds that the decision is not subject to appeal [CFR 215.8(a)(4)].



This decision constitutes the final administrative determination of the Department of Agriculture [36 CFR 215.18(c)].

Sincerely,

/s/ John R. Kirkpatrick  
JOHN R. KIRKPATRICK  
Deputy Regional Forester, Resources

cc:  
Forest Supervisor, Gila NF  
District Ranger, Luna RD  
Glen McCarty  
C.Gonzalez