



United States
Department of
Agriculture

Forest
Service

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Date: February 24, 2003

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**CERTIFIED MAIL – RETURN
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RE: Appeal #02-03-10-0029-0033 and 0042-A251, Chicoma Allotment, Española Ranger District, Santa Fe National Forest

Dear Mr. «LastName»:

This letter documents my second-level review decision of the appeal you filed on January 15, 2003. Your appeal is in regard to District Ranger Miera's (Deciding Officer) August 30, 2002, decision amending your 2002 annual operating instructions for the Chicoma Allotment (Doc. 3). Ranger Miera's decision required complete removal of livestock from the allotment by September 15, 2002. Your appeal was filed and has been processed under the provisions of 36 CFR 251, subpart C.

BACKGROUND

Your first-level appeal was filed on September 27, 2002 (Doc. 9). On October 3, 2002, Forest Supervisor Atencio (Reviewing Officer) notified you that your appeal was being consolidated with appeals from other Chicoma Allotment permittees appealing the same decision (David Ortiz, Johnny Borrego, Eloy Garcia, Santiago and Lionel Maestas, Richard M. Salazar) (Doc. 10). On October 10, 2002, the Reviewing Officer notified you that an appeal from Henry J. and Della Serna was also being consolidated with your appeal (Doc. 11). On October 11, 2002, the Reviewing Officer held an oral presentation with Henry J. Serna, Lionel R. Maestas, Richard M. Salazar, Sylvia Garcia, Eloy Garcia, and David Ortiz (Doc. 12).

In accordance with the provisions of 36 CFR 251.94, the Deciding Officer completed his written responsive statement to your appeal on November 12, 2002 (Doc. 13). Based on his review of the record, the Reviewing Officer affirmed the Deciding Officer's decision on January 2, 2003 (Doc. 15).

Your second-level appeal was received in this office on January 21, 2003. By letter dated February 14, 2002, I notified you that a decision on your appeal would be made within 30 days from the date the appeal record was received from the first-level Reviewing Officer.



POINTS OF APPEAL

My review of this appeal was confined to the substantive points raised in the appeal, the appeal record, federal regulations, and the policies and operational procedures as set out in the directives system of the USDA Forest Service. The first-level Reviewing Officer's decision letter responded to six appeal points that he had identified through review of the notices of appeal and clarification of issues during the oral presentation.

Based on a review of your appeal, the appeal record, and the Deciding Officer's decision to require complete removal of all permitted livestock from the Chicoma Allotment, I have concluded that the substantive point that needs to be addressed in my review is the requirement to remove all livestock from the allotment prior to the end of the 2002 grazing season.

ISSUE 1: There is no basis for the District Ranger's decision.

Contention: The appellants contend there is no way to determine if the decision was based on the best available scientific information. The appellants allege that the decision to require removal of all livestock from the Chicoma Allotment was made based on a simple drive-through survey conducted by Forest personnel. Therefore, absent any scientific information, it is impossible to determine if the Deciding Officer's decision was based on the actual range condition.

Discussion: The Southwestern Region is in an unprecedented period of a prolonged dry weather pattern, on a scale not experienced since mid-1950. For the 12-month period ending May 31, 2002, the statewide average precipitation for New Mexico was the sixth lowest of the past 107 years (June through May periods). For the winter 2001-2002, precipitation was the lowest on record. This general lack of moisture resulted in a statewide precipitation average of 60 percent below normal. Additionally, the Chicoma Allotment falls within the Northern Mountains Climatic Division of New Mexico. For approximately 48 months preceding the end of May 2002, the United States Drought Monitor classified the Northern Mountains Climatic Division as being extremely dry.

Rangeland plants are dependent on soil moisture for survival. Lack of adequate soil moisture affects virtually every physiological process in plants, often resulting in a loss of plant vigor and, in extreme cases, plant mortality. Drought conditions that result in a reduction of vegetative ground cover can lead to increased soil erosion, a loss of site productivity, and degradation of water quality.

On June 6, 2002, Forest Supervisor Atencio notified all Santa Fe National Forest grazing permittees of the seriousness of the drought conditions. In his letter, he stated, "In my 30-year career of managing national forest lands in Northern New Mexico, I personally have not witnessed environmental conditions as serious as the ones before us today." Supervisor Atencio summarized the situation as follows (Doc 4.):

- Cool season forage species greened up, but produced little forage;
- Earthen stock tanks were virtually empty, while stream and spring flows were limited throughout the Forest;

- The outlook for summer weather patterns breaking the effects of drought on rangeland forage species were not good;
- Forage recovery that did occur would be needed to ensure plant survival.
- Even with summer moisture, a majority of allotments would not have sufficient forage to support grazing through the normal season.

In his letter, Supervisor Atencio also stated, “When utilization is nearing the allowable level it is time to start moving cattle so they are out of that pasture or off the allotment before the use rate is exceeded.”

On July 1, 2002, the Deciding Officer issued instructions to reduce stocking 40 percent by July 10 and to remove all cattle from the Chicoma Allotment by July 31. Based on permittee concerns the Forest Service was being too conservative, Supervisor Atencio agreed to conduct joint monitoring of rangeland conditions on the Chicoma Allotment with the Range Improvement Task Force (RITF) from the New Mexico State University.

At the conclusion of the study, the RITF and Forest Service concluded rangeland conditions were not adequate to sustain continued grazing on the Chicoma Allotment for the remainder of the 2002-grazing season. Specifically, the data collected documented that leaf heights failed to meet acceptable thresholds, resulting in overuse of key areas (Doc. 36). As a result, the Deciding Officer amended his July 1 instructions on August 30 to require removal of all livestock from the Chicoma Allotment by September 15, 2002.

Finding: Based on the record, it is apparent that the Deciding Officer’s decision to require removal of all permitted livestock from the Chicoma Allotment was based on the need to provide for the protection of rangeland resources due to drought conditions.

DECISION

In these times of extended drought, we are sympathetic to, and understanding of, livestock operators’ needs for forage. Ranchers adapting to drought conditions accompanied by economic pressures caused by use reductions find this to be a very difficult time. In addressing the drought situation’s impact on our permittees, we are coordinating our activities wherever possible with the Natural Resource Conservation Service and other State and Federal agencies to help them through this tough situation. Significant reductions in cattle use have occurred across the Western United States in response to drought, because there is little or no forage on the National Forest System lands to support the use. Continued use would impair the short- and long-term health of rangelands.

The Forest Service is being as flexible as possible in allowing changes in use, while making sure our decisions are consistent with good land stewardship. We will continue to review and assess viable options on a case-by-case basis with permittees, Universities, Cooperative Extension Agents, and other third parties in an effort to minimize the impact on the livestock industry in the Southwestern Region.

After a review of the appeal record, I find that the Deciding Officer's decision is in conformance with applicable laws, regulations, policies, and procedures. I find no evidence indicating the Deciding Officer has acted in an arbitrary and capricious manner. The Deciding Officer's decision to require complete removal of livestock from the Chicoma Allotment is affirmed.

This decision constitutes the final administrative determination of the Department of Agriculture [36 CFR 251.87(e)(3)].

Sincerely,

/s/ Abel M. Camarena
ABEL M. CAMARENA
Appeal Reviewing Officer,
Deputy Regional Forester

cc: Barry Imler, Christina Gonzalez, David M Stewart, Mailroom R3 Santa Fe