



United States
Department of
Agriculture

Forest
Service

Santa Fe National Forest

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File Code: 1570/2230

Date: January 29, 2003

Juan J. Lovato
P.O. Box 67
Canones, NM 87516

Certified Mail – Return Receipt
Requested

RE: Appeal No. 02-03-10-0037-A251
Appeal No. 02-03-10-0038-A251
Appeal No. 02-03-10-0041-A251

Dear Mr. Lovato:

This is to inform you that the record for the above mentioned appeals is closed as of this date.

The following is a listing of the appeal points as identified in the notices of appeal and clarified during oral presentations.

Appeal Points:

1. Appellants dispute the decisions requiring livestock removal from the Mesa del Medio allotment by October 5, 2002. Appellants contend “there is no way to determine if this decision is based on the best available scientific information.” Appellants have also stated that they were “afforded no opportunity to participate in evaluations other than those by the Range Improvement Task Force (RITF) and should be allowed to see the results of any evaluations to compare with the findings of the RITF.
2. Appellants contend that the RITF assessment indicated that there was no need for any livestock removal.
3. Appellants contend that key areas determined by the Forest Service are not far from main roads so they can be easily accessed by two-wheel-drive vehicles and certainly are not demonstrative of the entire allotment. Range “evaluation” that triggered the decision was a one-day USFS tour of the same 10 allotments in the Santa Fe National Forest in late June prior to the rainy season. One day to assess range conditions is not enough to see even one allotment, let alone make judgments affecting over a million acres of national forest lands, thousands of livestock and hundreds of northern New Mexico families.



4. There was no consideration of other factors impacting the resource such as trespass by other livestock and/or the number of elk on the allotment. Forest Service is not following through with a July 15, 2002 agreement with the New Mexico Department of Game and Fish.
5. Appellants contend that the Coyote District Ranger's decision to remove livestock from the allotment does not comply with federal laws, including National Environmental Policy Act and the Small Business Enforcement Fairness Act. Appellants further contend that the decision was made without consideration of the Environmental Justice Regulations (E.O. 12898).
6. Appellants contend that other options to removal of livestock were not considered including; supplemental feed, additional water sources and/or housing livestock on a community basis for communal feeding.

The following are my determinations regarding each of the identified appeal points.

Determinations by Appeal Point:

1. Range management specialists are expected to exercise professional judgement when interpreting qualitative and quantitative data in the development of their recommendations for management decision. Coyote Ranger District records, including data collected in July and September by the RITF, indicate heavy to severe grazing intensity at both key areas by the end of the grazing season. Heavy to severe grazing intensity exceeds acceptable levels. The acceptable use levels are based on research, published and unpublished, by faculty at New Mexico State University and other institutions. The acceptable use levels were provided to the grazing permittees through the Annual Operating Instructions prior to the start of the grazing season. The record further indicates the Mesa del Medio permittees were provided opportunities to comment on key area locations in 2001 and 2002. The decision to remove livestock was based on the best available information and was correct.
2. The RITF assessment was designed to determine availability of forage for livestock. It did not consider any other management factors, such as water availability, improvement condition, unauthorized or excess use by other livestock, or other management objectives. While the data collected by the RITF in July may have identified borderline forage conditions that supported grazing, the September data clearly indicate that grazing intensity exceeded desirable levels.
3. The record indicates that Mesa del Medio permittees were provided opportunities to evaluate key area locations. They are encouraged to participate in discussions and selection of key areas in cooperation with the Coyote District Ranger. The record indicates the decision to remove cattle from this allotment based on conditions in key areas was being considered prior to the one-day tour by regional office personnel.

4. The record indicates the Coyote District Ranger was addressing issues involving excess use by livestock and elk management on the Mesa del Medio allotment.
5. The grazing permits issued to the appellants contain specific terms and conditions that conform to all applicable laws and regulations. Enforcement of those terms and conditions by the Coyote District Ranger was an administrative action in conformance with Forest Service policies that are themselves in conformance with all applicable laws and regulations.
6. Supplemental feeding to replace forage on over utilized range is prohibited by Forest Service policy. The appellants themselves state that management alternatives were limited by the lack of dependable water sources. Communal housing and feeding on private lands is an option the permittees need to discuss among themselves.

Relief Requested:

Appellants did not request any specific relief from this decision, other than a stay of implementation. The request for a stay was denied.

Appeal Decision

Based on the information in the record for this appeal and the unavailability of any form of relief, I am affirming the decision by the Coyote District Ranger.

Appeal Rights

You may file an appeal of this decision with the Regional Forester within 15 days of today's date. If you file this appeal, the review will be limited to the existing record. No additional information will be added to the file.

If you wish to appeal this decision, you must send a Notice of Appeal to Harv Forsgren, Regional Forester, Southwest Region, 333 Broadway Blvd. SE, Albuquerque, New Mexico 87102 with copies to Leonard Atencio, Forest Supervisor, Santa Fe National Forest, 1474 Rodeo Road, P.O. Box 1689, Santa Fe, New Mexico, 87504-1689 and Francisco Sanchez, District Ranger, Coyote Ranger District, HC 78, Box 1, Coyote, New Mexico, 87012.

If you have any questions regarding this appeal or the appeal process, please contact Barry Imler at the letterhead address, by telephone at (505) 438-7801, or by electronic mail at bimler@fs.fed.us.

Sincerely,

/s/ Gilbert Zepeda (for)
LEONARD ATENCIO
Forest Supervisor

cc: Coyote District Ranger