



United States
Department of
Agriculture

Forest
Service

Santa Fe National Forest

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File Code: 1570-1/2230-3

Date: July 18, 2003

Severiana Salazar and Sons
County Road 194 Canones
Abiquiu, NM 87510

CERTIFIED MAIL – Return Receipt
No. 7003 0500 0005 1470 0206

RE: Appeal #03-03-10-0006-A251, Mesa del Medio Allotment 2003 AOI, Coyote RD

Dear Ms. Salazar:

This letter constitutes my review and decision on the appeal you filed regarding the Annual Operating Instructions (AOI) for the Mesa del Medio Allotment.

My review was conducted according to the provisions of the appeal regulations in 36 CFR 251 Subpart C. I have considered the appeal record, federal statutes, policies, and operational procedures set out in the directives system of the USDA Forest Service. The appeal points presented in your May 13, 2003 appeal and your May 28, 2003 oral presentation were reviewed as well as the District Ranger's decision and June 19, 2003 Responsive Statement.

Points of Appeal

My review will focus on your appeal points in your May 13, 2003 letter.

ISSUE 1: 2003 Authorized Head Month Reduction

Contention: You contend that you are appealing to protect your rights as an allotment owner against implementation of a "worst case scenario".

Response: The regulations at 36 CFR 222.3 specifically state that grazing permits convey no right, title or interest held by the United States in any lands or resources.

The grazing permit is the primary instrument used to administer grazing on the Mesa del Medio allotment. Determining proper levels of grazing and management is an iterative and adaptive process based on immediate resource needs and management objectives.

In your Notice of Appeal you indicate that protesting a 40 percent reduction in the number of cattle and a one month reduction in season of use during the 2003 grazing season. The combined effect of these two reductions is an authorized use level equal to 48 percent of your permitted annual head months for this allotment.

The AOI for this allotment indicates there has been no reduction in number of cattle, but there has been a one month reduction in season of use during the 2003 season. The one month



reduction in season of use reduced your authorized head months to 80 percent of your permitted annual head months for this allotment.

I find that the District Ranger has acted within his authority. He has not implemented the “worst case scenario”.

ISSUE 2: Consideration of Range Improvement Task Force Data.

Contention: You contend the stocking numbers and season of use should be determined based upon actual, current scientific data procured by an independent third party; the Range Improvement Task Force.

Response: The regulations at 36 CFR 222.2(c) provides the authority for the Forest Service to manage forage producing lands for livestock grazing. Ultimately, the responsibility for managing National Forest System lands rests with the Forest Service.

The regulations at 36 CFR 222.7(d) direct the Forest Service to cooperate with other agencies, institutions, organizations and individuals who have an interest in improvement of range management on public lands. The District Ranger has incorporated data collected in cooperation with the Range Improvement Task Force into his analysis.

I find the District Ranger has acted within his authority regarding consideration of Range Improvement Task Force data.

ISSUE 3: Existing rights/Three Year Minimum of Production Data.

Contention: You contend the authorization of less than permitted head months infringes upon your rights as a permittee. A minimum of three years of production data is necessary to support any reduction in numbers.

Response: The AOI is used to address immediate needs or convey annual management directions. Authorization for the District Ranger to issue written instructions that document utilization levels and/or provide additional direction necessary for proper management of rangeland resources is contained in the grazing permit and in agency policy.

The District Ranger has redeemed his responsibilities for providing proper administration of the permit in accordance with USDA regulation, and agency policy and procedures. Any permanent modifications to the permit will be made in conjunction with the National Environmental Policy Act (NEPA) analysis process to authorize grazing.

Forest Service policy does not require a minimum of three years production data to support any reduction in permitted numbers.

Your statements within your May 13, 2003 Notice of Appeal indicate your belief that grazing capacity has been reduced from levels present during the last range analysis. Your current term grazing permit is based on that analysis.

I find the District Ranger correctly used his authority to issue instructions for proper protection and management of resources. His decision to issue the AOI did not modify the permit but simply provided for proper administration of the permit.

ISSUE 4: Parity, Fairness, Consideration of Economic Impact

Contention: You contend there was no parity or fairness in the development of this decision. There was no consideration of the economic impact on our livestock operation, family and community.

Response: In his responsive statement the District Ranger explains that he attempted, during multiple discussions with all affected permittees on the Mesa del Medio allotment, to negotiate the necessary reduction in authorized head months. He made this decision within a time frame that provided sufficient advance warning for adversely affected permittees to make the economic decisions appropriate for their own livestock operations.

I find the District Ranger did consider parity, fairness and economic impact issues in his decision making process.

ISSUE 5: Science Based Decision Making/Actual Range Condition

Contention: You contend there is no evidence that this decision making process is based upon science or actual range condition.

Response: Science based decision making does not require that a scientist perform the actual data collection and/or analysis. Trained professionals or others can collect and/or analyze data using techniques established through scientific research.

In his responsive statement the District Ranger explains how science based data and analyses were used in the decision making process. Results of these analyses (soil cover, estimated 2002 production, measured 2002 utilization, estimated 2003 production) provided elements necessary for an initial early assessment of range condition upon which to base decisions for the 2003 grazing season.

I find the District Ranger did incorporate appropriate science in the basis for his decisions.

ISSUE 6: Range Readiness Consistency

Contention: You contend there is a lack of consistency in application of range readiness standards from district to the next.

Response: I find that no examples of inconsistency in application of range readiness standards have been provided.

ISSUE 7: Elk Population

Contention: You contend nothing significant has occurred since July 15, 2002 that addresses the over population of elk within this allotment.

Response: In his responsive statement the District Ranger presents information indicating the Forest Service and New Mexico Game and Fish Department are coordinating efforts to address this issue. In addition to coordination meetings, he cites the joint collection of data needed to analyze the issue and joint actions to disperse the elk.

In your oral presentation on May 28, 2003 you acknowledged that you are aware of the continuing efforts to address elk issues.

I find the District Ranger is addressing issues related to elk populations.

ISSUE 8: Lack of Management Resulting in Watershed Harm.

Contention: You contend the lack of management by the Forest Service has resulted in tree encroachment that has not only harmed the watershed, but has also led to a reduction in the number of grazing animals that can utilize the forest.

Response: Watershed condition and grazing capacity are analyzed during development of Allotment Management Plans. The allotment analysis for the Mesa del Medio allotment has not been completed. Data collection regarding grazing capacity is scheduled to begin this year. The analysis is scheduled for completion in 2007.

I find there is no site specific data to support the contention that watershed condition has been harmed or that grazing capacity has been reduced.

ISSUE 9: Elk Damage to Range Improvements

Contention: You contend you should not be held responsible for maintenance of range improvements damaged by elk. The New Mexico Game and Fish Department should be assigned sections of allotment fences to repair. The permittees and/or associations should determine the New Mexico Game and Fish Department's maintenance responsibilities.

Response: The regulations at 36 CFR 222.9(c) provide the authority for the Forest Service to require a user of the range resource on National Forest System lands to maintain improvements to specified standards.

The regulations at 36 CFR 222.3(a) state that unless otherwise specified by the Chief, Forest Service, all grazing and livestock use on National Forest System lands must be authorized by a livestock grazing or use permit. In his responsive statement the District Ranger reiterates general terms and conditions of term grazing permits.

The New Mexico Game and Fish Department is not required by any law, regulation or policy to obtain a permit from the Forest Service to manage wildlife on National Forest System lands. The department is not viewed as a user of the range resource.

As previously stated, grazing permits convey no right, title or interest held by the United States in any lands or resources.

I find the District Ranger correctly used his authority to issue instructions for proper protection and management of resources.

ISSUE 10: Range Improvement Expenses

Contention: You contend there have been no range improvements funded by range betterment funds on the Mesa del Medio allotment in at least a decade. There is a need for an audit of range betterment and other funds directed toward range improvement and resource enhancement on the Santa Fe National Forest.

Response: In his responsive statement the District Ranger provided an overview regarding range betterment funds for the Coyote Ranger District in general, and specifically the Mesa del Medio allotment. He described the prioritization process for financing projects through range betterment and other funds. In his statement he asserted that an allotment management plan was developed for the Mesa del Medio allotment in 1993. He further stated that numerous range improvements were constructed as part of the implementation process for that plan.

There has been no data provided indicating any law, regulation or policy has been violated regarding the use of range betterment or other funds directed toward range improvement and resource enhancement on the Santa Fe National Forest. In the absence of such data, there is no compelling reason to initiate the requested audit.

I find the District Ranger is operating within his authority to prioritize range improvement projects and authorize financing through the range betterment fund.

ISSUE 11: Forest Service Staff

Contention: You contend Forest Service personnel are inadequately trained in range science or unfamiliar with environmental conditions in northern New Mexico. Forest Service personnel are not held accountable for range condition and impacts from their decisions on local custom, culture and economy.

Response: In his responsive statement the District Ranger identifies the level of education and training required of rangeland management specialists. These standards were established in cooperation with professional groups, educational institutions and government agencies.

The District Ranger stated that accountability for rangeland resource conditions and long-term sustainability of a grazing program that supports local custom, culture and economy are some of

the reasons he has been making adjustments in authorized use levels for the Mesa del Medio allotment.

I find the District Ranger correctly used his authority to issue instructions for proper protection and management of resources. He is considering long-term sustainability in his decisions, which may require short-term sacrifices.

ISSUE 12: Language Differences

Contention: You contend the language addressing “excess use” in the 2003 AOI is radically different from that used in the 2002 AOI.

Response: In his responsive statement the District Ranger noted the 2002 AOI did not address “excess use”.

The language in the 2003 AOI includes a quotation from Part 3 Paragraph 8(d) of the general terms and conditions associated with a term grazing permit on National Forest System lands.

I find the District Ranger correctly used his authority to issue instructions for proper protection and management of resources. His inclusion of terms and conditions from the existing term grazing permit in the AOI did not modify the permit.

ISSUE 13: Parity in Forest-Wide Reductions

Contention: You contend the Mesa del Medio allotment is being penalized for being vocal in attempts to protect permittee rights. Grazing allotments on the Santa Fe National Forest in which the appellants do not materially participate have not faced reductions as drastic as those implemented on the Mesa del Medio allotment.

Response: The AOI issued by the District Ranger reduced the authorized head months on the Mesa del Medio allotment by 43 percent. Authorized use for the 2003 grazing season was reduced from permitted levels by 50 percent or more on 16 allotments across the Santa Fe National Forest. The appellants do not materially participate in management on any of these allotments.

I find the District Ranger has acted within his authority to issue instructions for proper protection and management of resources. There is no evidence of an attempt to penalize Mesa del Medio allotment permittees for being vocal in attempts to protect permittee rights.

ISSUE 14: Compliance with Laws

Contention: You contend a decision issued in this manner is not compliant with several federal laws and mandates including but not limited to the National Environmental Policy Act and the Small Business Regulatory Enforcement Act. Furthermore, it does not take into consideration Executive Order 12899 and/or the U.S.D.A. environmental justice regulations.

Response: Section 402(e) [43 USC 1752(d)] provides the authority for the Secretary to incorporate terms and conditions necessary for management and protection of rangeland resources into term permits in accordance with the laws applicable to management of National Forest System lands. Section 402(e) also authorizes the Secretary to adjust any aspect of grazing at any time to protect rangeland resources.

The Chief, Forest Service, is authorized to issue permits for livestock grazing on National Forest System lands (36 CFR 222.3(c)). In compliance with Forest Service policy the authority to adjust, within the limits of the terms and conditions of the permit, any aspect of grazing at any time to protect rangeland resources has been delegated to District Rangers on the Santa Fe National Forest.

I find the District Ranger has acted within his authority, as outlined in Forest Service policy, to issue decisions regarding proper protection and management of resources.

DECISION

After review of the appeal record, I find that the District Ranger's decision as described in the 2003 Annual Operating Instructions for the Mesa del Medio allotment was based on a reasonable assessment of current resource objectives and conditions. The District Ranger's decision is in conformance with applicable laws, regulations, policies, and procedures. I find no evidence indicating the District Ranger has acted in an arbitrary or capricious manner. The District Ranger's decision is affirmed.

My decision is subject to further administrative review under 36 CFR 251. Any appeal of this decision to the second level must be fully consistent with 36 CFR 251.90, content of notice of appeal. Pursuant to 36 CFR 251.87(c) (2), "the appeal for a second level of review is filed with the regional forester within 15 days of the first level appeal decision. Upon receiving such a request, the regional forester shall promptly request the first level file from the forest supervisor. The review shall be conducted on the existing record and no additional information will be added to the file."

Appeals must be filed with:

Regional Forester
Southwestern Region
333 Broadway SE
Albuquerque, NM 87102

Sincerely,

/s/ Gilbert Zepeda
GILBERT ZEPEDA
Acting Forest Supervisor

cc: Francisco B Sanchez, Christina Gonzalez