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File Code: 1570-1/2230
Date: August 8, 2008

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

CERTIFIED MAIL 7003 1010 0001 8780 3494
RETURN RECEIPT REQUESTED

Reference: Appeal #08-03-06-0012-A251

Dear Mr. and Mrs. McKeen:

By now you should have received a July 28, 2008, letter from Deputy Regional Forester, Faye Krueger, redirecting your July 11, 2008, request for discretionary review on your appeal #08-03-06-0007-A251 (dated March 25, 2008) back to the Forest Supervisor's Office for consideration. As you will notice in the Deputy Regional Forester's letter, it has been determined that your July 11, 2008, appeal is a first level appeal of a new District Ranger's decision to cancel the billing for $61.50 and credit your account. This first-level appeal should have been filed with the Forest Supervisor. Therefore, it has been reassigned to me and has been issued a new number of 08-03-06-0012-A251.

Since I already have a copy of your July 11, 2008, appeal and the direction from the Deputy Regional Forester, I am going to process this appeal at this time. I will assess and make the appeal decision based on the information presented in your July 11, 2008, letter, the regulations and policies pertaining to this matter, and the procedures found in the 36 CFR 251 appeal regulations.

ASSESSMENT OF APPEAL

Appeal #08-03-06-0007-A251 was dismissed in my letter to you dated June 27, 2008, following Ranger Morrison's withdrawal of her decision to charge you for 15 head months of excess use at the unauthorized use rate, which amounted to $61.50. When Ranger Morrison withdrew her decision to bill for the excess use, it was determined that the $61.50 that you were billed for and paid, would be credited towards the grazing fees you currently owe for the second half of the 2008 grazing season.

It is my understanding that you are now appealing (in your July 11, 2008 letter) the decision to credit the $61.50 towards the second half 2008 grazing fees you currently owe. You are requesting as a remedy in your appeal that you be granted a refund of $61.50 with interest, a letter of reprimand be sent to Ranger Morrison, and instructions be given to Ranger Morrison that she is required to follow the AOI. I hope that I have clearly defined the current situation.

I feel it is also important to explain my role as the appeal reviewing officer and the steps I am taking to make an informed and fair decision concerning this appeal. My role first requires a clear understanding of the appeal point(s) or item(s) in question. I have presented above my understanding of what decision is being appealed. Second, it is important that the relief sought is clearly understood. I have also presented my understanding of the relief sought in my comments above.

Third, I have reviewed the requirements of the 36 CFR 251 appeal regulations; and based upon that review, I am presenting the following findings:

- The appeal point or question concerning the credit or refund of the $61.50 does meet all requirements for a 36 CFR 251 appeal. Refunds and credits are allowed "under justifiable conditions and circumstances as determined by the Forest Supervisor." (FSM 2238.11g). This authority may be delegated to the District Ranger (FSM 2204.3). This is a discretionary decision that is subject to appeal (36 CFR 251.82 (3).

- The relief sought of having a refund instead of having the $61.50 credited towards the current fees owed for the second half of 2008 grazing fees is a remedy that could legally be granted subject to conditions above. However, the Debt Collection Improvement Act of 1996 requires federal agencies to include the payee's Social Security or Tax ID number on certified payment vouchers. You have been previously notified of this requirement in your 2008 and 2007 Annual Operating Instructions (AOI), section IV. General Instructions, Item 4. The District Ranger did not receive your Social Security or Tax ID number to process a refund. Processing a refund would take additional time and involve personnel at various levels of the Forest Service.

- As a current livestock allotment permittee, there is an August billing which you will owe.

- The payment of interest on the $61.50 is not a remedy that can be granted. A review of Forest Service Manuals and Handbooks (FSM 2200, FSH 2209.13. and FSH 6509.11K) pertaining to credits and refunds of grazing fees, does not provide any reference to or authorization for paying interest on grazing fees that have been collected.

- Your request for relief sought a letter of reprimand to be sent to Ranger Morrison, which is a remedy that cannot be granted in this appeal and is outside the scope of the review under 36 CFR 251.83(i). Relief sought by an appellant needs to resolve the point(s) or decision being appealed. The basic written authorization (Term Grazing Permit) that is the basis for the decision made by the deciding officer does not in any way deal with Forest Service personnel matters.

- Your request for relief also sought to instruct Ranger Morrison that she is required to follow the Annual Operating Instructions. This is a remedy that has no bearing upon the decision made by the deciding officer (to credit or refund the $61.50). Further, District Rangers have full delegated authority to develop, issue, and ensure compliance with yearly instructions pertaining to the grazing management of an allotment. Annual Operating Instructions, while developed in cooperation with the permittee, can be -- and often are -- amended or changed by the District Ranger to administer the grazing permit.

After completing the above assessment, I have determined the decision that is being appealed is very straight forward. The deciding officer is returning the $61.50 as a credit and the appellant wants the $61.50 returned as a refund by check or money order. Since this is not an issue that warrants any further analysis or clarification, I am moving forward and rendering my appeal decision at this time.

APPEAL DECISION

My decision is to uphold the District Ranger's decision to credit the $61.50 amount, rather than issue a refund. No Tax Identification Number was provided to the District Ranger, and there are not justifiable conditions and circumstances to warrant a refund over a credit.

This decision is subject to a second level of review by the Regional Forester per 36 CFR 251.87(c.). In order to have a second level review of this decision you will need to file your request within 15 days of this decision with Regional Forester, Corbin Newman, at 333 Broadway NE, Albuquerque, NM 87102.

Sincerely,

/s/ Richard E. Markley
RICHARD E. MARKLEY
Forest Supervisor