



United States
Department of
Agriculture

Forest
Service

R3 Regional Office

333 Broadway SE
Albuquerque, NM 87102
FAX (505) 842-3800
V/TTY (505) 842-3292

File Code: 1570-1/2200

Date: February 20, 2003

Jay L. Shapiro
Fennemore Craig Law Offices
3003 North Central Avenue, Suite 2600
Phoenix, AZ 85012-2913

**CERTIFIED MAIL – RETURN
RECEIPT REQUESTED**

RE: Appeal #03-03-00-0014-A251, Beehive/Sheep Springs Allotments, Springerville Ranger District, Apache-Sitgreaves National Forests

Dear Mr. Shapiro:

This letter documents my second-level review decision of the appeal you filed on behalf of Dobson and Dobson Livestock, Dobson Estate, and Sheep Springs Sheep Company. The appeal is in regard to District Ranger MacIvor's decision to implement Alternative 5 on the Beehive and Sheep Springs Allotments. The appeal was filed and has been processed under the provisions of 36 CFR 251, subpart C.

BACKGROUND

District Ranger MacIvor (Deciding Officer) issued a decision on August 23, 2002, for the Beehive and Sheep Springs Allotments. The decision resulted in the selection of the following alternative:

Beehive and Sheep Springs Allotments, Alternative 5, which authorizes 2,000 head of sheep (Band 1) to graze June 1 through August 18 annually; 2,000 head of sheep (Band 2) to graze from June 2 through August 19 annually; 400 head of sheep (Truck band) to graze June 1 through September 25 annually; and 333 head of cattle (cow/calf) to graze July 1 through October 31 annually.

Your first-level appeal was filed on October 10, 2002. On October 31, 2002, Forest Supervisor Bedell (Reviewing Officer) notified you that your appeal was timely and would be processed in accordance with 36 CFR 251. Under the provisions of 36 CFR 251.94, the Deciding Officer completed his written responsive statement to your appeal on November 7, 2002. On November 27, 2002, you filed a written reply to the responsive statement with the Reviewing Officer. Based on his review of the record, Forest Supervisor Bedell affirmed the Deciding Officer's decision on December 23, 2002.

Your second-level appeal was received in this office on January 10, 2003.



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.

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

Contention: The appellant contends the Deciding Officer's decision to modify the term grazing permit is based on his desire to approximate the actual use record for the Beehive and Sheep Springs Allotments. The appellant argues the decision to reduce permitted numbers and limit the season of use is irrational and unsupportable.

Discussion: One of the key issues identified in the environmental assessment was the concern that permitted livestock use was not in balance with available forage as required by the Apache-Sitgreaves Land and Resource Management Plan. Another key issue was the concern for grazing pastures too early for plant development or when soils are too wet (Doc. 165). Alternative 3 in the environmental assessment analyzed the impacts of continuing management of the allotments under existing permitted numbers and season of use. The analysis points out that Alternative 3 relates to the permitted numbers and not the actual numbers that have been run over the past 10 years that have averaged 70% of permitted numbers. The analysis concluded that if full numbers were grazed, the combined forage demand of livestock and wild ungulates would result in forage use in excess of site-specific allowable forage use standards. This situation would in turn require the early removal of livestock from the allotments on an annual basis in order to protect rangeland resources. Additionally, the analysis concluded adequate forage development for cool season species would not occur; impacts caused by hoof shear and soil compaction in riparian areas and mesic meadows would increase; and overall improvement to watershed and soils would be slower or may even decline. The analysis concluded Alternative 3 would do the least to achieve desired resource conditions. Conversely, the selected alternative (Alternative 5) would: 1) achieve and/or maintain fair or better range conditions; 2) achieve and/or maintain desired density and distribution of cool season herbaceous species and healthy and vigorous browse stands; 3) achieve and/or maintain good or better conditions in riparian areas; 4) maintain and/or stop soil loss at or below tolerance levels and stabilize areas of active erosion; and 5) provide adequate vegetative cover to support viable populations of diverse wildlife species and permit maintenance and/or recovery of any wildlife species." (Doc. 165).

Under the selected alternative, 31 percent of the total herbaceous forage production would be allocated to domestic livestock; 2 percent to wild ungulates; and 67 percent to maintaining the vigor and health of forage plants, maintaining effective ground cover to protect soils from erosion, and to providing food and hiding cover for other wildlife species (Docs. 26, 90, 165). The basis for these allocations is consistent with Forest Service Allotment Analysis Handbook (FSH 2209.21) and considered the physiological needs of key forage species, slope and terrain, wildlife habitat needs, timing of grazing, and location of areas of concern such as riparian areas (Doc. 120).

Finding: The Deciding Officer made a balanced decision considering the need to provide sustainability of rangeland resources. The decision is not irrational and unsupportable.

DECISION

After 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.

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: David M Stewart, Christina Gonzalez, John C Bedell, John MacIvor, Mailroom R3 Apache Sitgreaves