



United States
Department of
Agriculture

Forest
Service

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Date: September 15, 2003

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RE: Appeal #03-03-02-0001-A251, Jarita Mesa/Alamosa Allotments, El Rito Ranger District,
Carson National Forest

Dear Mr. «Last_Name»:

This letter documents my second-level review decision of the appeal you filed on August 13, 2003. Your appeal is in regard to Acting District Ranger Merino's (Deciding Officer) March 12, 2003, annual operating instructions for the Jarita Mesa and Alamosa Allotments. 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 May 15, 2003. In accordance with the provisions of 36 CFR 251.94, the Deciding Officer completed his written responsive statement to your appeal on June 13, 2003. On July 11, 2003, you filed a written reply to the responsive statement with the Reviewing Officer. Based on his review of the record, the Reviewing Officer affirmed the Deciding Officer's decision on August 4, 2003.

Your second-level appeal was received in this office on August 18, 2003. By letter dated August 25, 2003, 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.

POINT 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 four appeal points that he had identified through review of the notice of appeal.

Based on a review of your appeal and the appeal record, I have concluded that the substantive issue that needs to be addressed in my review is the requirement to adjust livestock numbers and delay entry date onto the Jarita Mesa and Alamosa grazing allotments for the 2003 grazing season.

ISSUE 1: The decision by Ranger Merino to depart from the traditional authorized season of May 1 to October 31 without collaborating with the permittees is in direct conflict with the 2003 Range Management Action Plan.



Contention: The appellants contend that the Forest Service has replaced the traditional May 1 to October 31 grazing season to an authorized season based on factors devoid of permittee input. The appellants believe this could ultimately lead to a shorter grazing season for the permittees.

Discussion: The record reflects the Deciding Officer obtained permittee input in the development of the annual operating instructions at the annual permittee meetings. This occurred on February 19, 2003, for the Jarita Mesa Allotment and on February 23, 2003, for the Alamosa Allotment (Responsive Statement). The record also reflects the Deciding Officer was sensitive to the permittees' concern that their grazing season could be permanently shortened through the issuance of annual operating instructions. In response to this concern, the Deciding Officer added language to the 2003 annual operating instructions that read: "In addition, the authorized number of livestock and delayed entry date will not change the current term grazing permit, permitted livestock number, or the permitted season dates. As mentioned previously, the authorized livestock number and delayed entry date is based on drought and range conditions." Additionally, the first-level Reviewing Officer in his appeal review stated, "Any permit modification that permanently changes use numbers and season can only be done thru the National Environmental Policy Act (NEPA) process." In an April 18, 2003, letter to Carson National Forest permittees, Forest Supervisor Chavez stated, "It is important to note that any reductions in livestock numbers or seasons in the AOI's are not permanent reductions to your permit, rather they are temporary reductions based on annual monitoring of resource conditions...."

Annual operating instructions are required for the proper administration of grazing under the provisions of the term grazing permit. The term grazing permit provides broad discretion to issue instructions to permittees, as needed, for resource protection. Specifically, Paragraph 8(c) of all term grazing permits states, "When in the judgment of the Forest officer in charge the forage is not ready to be grazed at the beginning of the grazing season, the permittee, upon request of the Forest Officer, will defer placing livestock on the grazing allotment to avoid damage to the resources. The permittee will remove livestock before expiration of the designated grazing season upon request of the Forest officer when it is apparent that further grazing will damage the resources." When implementing Paragraph 8(c) Forest Officers have the latitude to adjust season of use and/or numbers under this provision in order to protect rangeland resources.

In considering stocking rates and season of use in the 2003 Annual Operating Instructions for the Jarita Mesa and Alamosa Allotments, the Deciding Officer based his decision on 2003 range inspections and permittee input, and on 2002 range inspections and monitoring. The record reflects that the Deciding Officer amended the 2003 annual operating instructions for the Jarita Mesa and Alamosa Allotments based on pre-season monitoring conducted on May 2, 2003. As a result of the pre-season monitoring, the Deciding Officer allowed livestock to enter the allotments on May 12, or 11 days earlier than specified in the original annual operating instructions issued on March 12, 2003 (letters dated May 5 and May 20, 2003).

The Climate Prediction Center (NCEP/NWS/NOAA) tracks broad-scale conditions relating to drought. Although these conditions may vary from site to site, they are a reliable indication of precipitation patterns and potential effects thereof. The Climate Prediction Center defines drought through the Standardized Precipitation Index (SPI). The SPI compares recent precipitation values to long-term historical norms to determine the dry or wet condition of a

particular area. A drought event occurs anytime the SPI is continuously negative and reaches the intensity of -0.75 or less. A drought event ends when the SPI becomes positive.

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.

The Jarita Mesa and Alamosa Allotments fall within the Northern Mountains Climatic Division of New Mexico. Beginning around January 1999, the SPI in the Northern Mountains Division began to fall below -0.75 (moderately dry) and reached a low of approximately -1.9 (very dry) by the fall of 2002. By January 2003, the SPI had returned to near normal. However, the SPI subsequently began to fall again, reaching a low of approximately -2 (extremely dry) by the end of July 2003. The Deciding Officer recognized the drying trend in his original operating instructions, where he stated, "The last 6 years of extended drought has created very dry soils and significantly reduced forage production and plant vigor..."

Drought has a pronounced impact on herbaceous vegetation. Rangeland plants are dependent on soil moisture for survival and are usually affected by lack of precipitation **early** in the drought cycle. 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. In a letter to Carson National Forest permittees dated April 18, 2003, Forest Supervisor Chavez stated, "It is important for you to understand that the Carson National forest is authorizing conservative use levels this year to allow for rangeland recovery. Although we have received near normal precipitation since February, research tells us that forage production will likely continue to be below average due to the stress and root die back for forage plants caused by several years of extended drought. Research recommends lighter grazing, during and following drought, to allow for forage plant recovery."

The Southwestern Region of the Forest Service follows the Principles of Drought and Range-Livestock Management published in 1999 (Rangeland Management Before, During, and After Drought) by Larry Howery, Assistant Rangeland Management Specialist, School of Renewable Natural Resources, University of Arizona, College of Agriculture. Mr. Howery, among other management decisions, recognizes the need to adjust annual stocking rates and provide for recovery of plant vigor following the return to normal precipitation patterns. Mr. Howery concludes, "There is no cookbook approach for proper drought management. It really boils down to the fact that sound range management practices that sustain or improve range condition will ultimately result in good drought management. Well-planned grazing practices that promote **conservative forage use** while sustaining high vigor of desirable plants is good insurance against drought."

Finding: Based on the record, it is apparent that the Deciding Officer's decision to delay the entry date onto the Jarita Mesa and Alamosa Allotments during the 2003 grazing season was based on the need to provide for the protection of rangeland resources due to drought conditions.

There is nothing in the record to indicate that the Deciding Officer has not followed the principles of sound rangeland management or that he has not made a reasoned decision. Additionally, the Deciding Officer's 2003 adjustment in numbers and season of use to protect rangeland resources **does not** constitute a modification of the term grazing permit that permanently shortens the grazing season for the permittees.

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. 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 adjust livestock numbers and delay the entry dates onto the Jarita Mesa and Alamosa Allotments for the 2003 grazing season 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: Christina Gonzalez, David M Stewart, Mailroom R3 Carson