



United States  
Department of  
Agriculture

Forest  
Service

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Carson National Forest

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File Code: 1570-1/2200

Date: May 11, 2005

Billy Stern  
Forest Guardians  
312 Montezuma Ave, Suite A  
Santa Fe, NM 87501

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED  
7004 2510 0000 3525 0044

RE: Appeals #05-03-02-0003-A215, Deer Creek Grazing Allotment and #05-03-02-0002-A215, Columbine Grazing Allotment

Dear Mr. Stern:

This is my review decision on the two appeals filed regarding the Deer Creek Allotment and Columbine Allotment Decision Notices, Findings of No Significant Impact, and Environmental Assessments. Deer Creek Allotment decision authorized grazing 50 cattle from July 1 to September 15 on 5,403 acres. The Columbine Allotment decision authorized grazing 57 cattle from July 5 to September 5 on 9,017 acres. Both allotments are on the Questa Ranger District, Carson National Forest.

### **BACKGROUND**

District Ranger Ron Thibedeau made these two decisions on September 30, 2004, and published a notice of the decisions in *The Taos News* on February 10, 2005. The District Ranger is identified as the Responsible Official, whose decisions are subject to administrative review under 36 CFR 215 appeal regulations.

Pursuant to 36 CFR § 215.17, an attempt was made to seek informal resolution of the appeals. The record indicates that informal resolution was not reached.

My review of these appeals has been conducted in accordance with 36 CFR § 215.18. I have reviewed the appeal record, including the recommendations of the Appeal Reviewing Officer. My review decision incorporates the appeal record.

### **APPEAL REVIEWING OFFICER'S RECOMMENDATION**

The Appeal Reviewing Officer found for both decisions: a) the decision logic and rationale were generally clearly disclosed; b) the benefits of the proposals were identified; and c) public participation and response to comments were adequate. However, the decisions are not consistent with direction related to consultation requirements under the Endangered Species Act; therefore the Appeal Reviewing Officer recommended the two decisions be reversed.



**APPEAL DECISION**

After a detailed review of the record and the Appeal Reviewing Officer's recommendation, I am reversing the Responsible Official's decisions on the Columbine Allotment and Deer Creek Allotment. My reversal is based on the technical review which shows it is unclear whether compliance with Section 7(a)(2) of the Endangered Species Act of 1973 (as amended) has been met for these allotments. Specifically the review found:

- The Deer Creek Allotment Biological Assessment and Evaluation contained no analysis of any kind for the listed species on the Carson National Forest. A summary "No Effect" statement was made, with no rationale as to why the project would have "No Effect" on any of the listed species potentially occurring in the project area.
- The Columbine Allotment Biological Assessment and Evaluation determined the project would have "No Effect" on any species except the Mexican spotted owl; however this "No Effect" determination was not explained.

I am directing this inadequacy be corrected and new decisions be issued based on new analyses. This decision constitutes the final administrative determination of the Department of Agriculture (36 CFR § 215.18(c)).

Sincerely,

*/s/ Martin D. Chavez, Jr.*  
MARTIN D. CHAVEZ, JR.  
Forest Supervisor

cc: Constance J Smith, Berwyn Brown, Ernie W Taylor, Audrey Kuykendall, Ron Thibedeau, Mailroom R3 Carson, David M Stewart

1 attachment - copy of Appeal Reviewing Officer letter



**File Code:** 1570-1  
**Route To:**

**Date:** May 6, 2005

**Subject:** ARO, Appeal # 05-03-02-0003-A215, Deer Creek, #05-03-02-0002-A215,  
Columbine Grazing Allotment

**To:** Appeal Deciding Officer

This is my recommendation on the disposition of the appeals filed in protest of the Decision Notices and Finding of No Significant Impact concerning the Columbine and Deer Creek Grazing Allotments on the Questa Ranger District, Carson National Forest.

District Ranger Ron Thibedeau signed the decisions on September 30, 2004. The District Ranger is herein termed as the Responsible Official. Mr. Billy Stern of Forest Guardians filed appeals on these decisions under the 36 CFR 215 appeal regulations.

### **Informal Disposition**

Pursuant to 36 CFR 215.17, an attempt was made to seek informal resolution of these appeals. The record reflects that informal resolution was not reached.

### **Review and Findings**

My review was conducted in accordance with 36 CFR 215.19 to ensure that the analyses and decisions are in compliance with applicable laws, regulations, policies, and orders. The appeal records, including the appellant's issues and requests for relief have been thoroughly reviewed. Having reviewed the Environmental Assessments (EA), decisions, and the project record files, as required by 36 CFR 215.19(b), I conclude the following:

- 1) The decisions clearly describe the actions to be taken in sufficient detail that the reader can easily understand what will occur as a result of the decisions.
- 2) The record reflects that the Responsible Official provided ample opportunity for public participation during the analysis and decision making process. The Responsible Official's efforts enabled interested publics the opportunity to comment and be involved in the site-specific proposals.
- 3) The decision is not consistent with policy and direction related to evaluation and documentation of environmental effects to Management Indicator Species (MIS). Specifically, the Deer Creek Biological Assessment and Evaluation (PR#67) contained no analysis of any listed species on the Carson National Forest. A summary "No Effect" statement was made with no rationale as to why the project would have "No Effect" on the Mexican spotted owl, or any of the other listed species potentially occurring in the project area.



The Columbine project Biological Assessment and Evaluation determined the project would have “No Effect” on any species except Mexican spotted owl, however this determination was not explained.

After considering the claims made by the appellant and reviewing the records, I found that the Responsible Official did not fully evaluate and disclose the environmental effects to MIS as required under Section 7(a)(2) of the Endangered Species Act of 1973.

### **Recommendation**

I recommend that the Responsible Official’s decisions relating to these appeals be reversed with instructions to further evaluate and disclose the effects to MIS and ensure compliance with Section 7 of the Endangered Species Act.

/s/ Richard Stahn  
Richard Stahn  
Appeals Reviewing Officer

cc: Constance J. Smith, Audrey Kuykendall

Hard copy of this letter to be attached to ADO letter sent to appellants.