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File Code: 1570/2230
Date: January 2, 2003

David Ortiz
P.O. Box 1082
San Juan Pueblo, NM 87566

Certified Mail – Return Receipt Requested

RE: Appeal No. 02-03-10-0029-A251
Appeal No. 02-03-10-0030-A251
Appeal No. 02-03-10-0031-A251
Appeal No. 02-03-10-0032-A251
Appeal No. 02-03-10-0033-A251
Appeal No. 02-03-10-0042-A251

Dear Mr. Ortiz:

This is to inform you that the record for the above mentioned appeals is closed as of this date.

The following is a listing of the appeal points as identified in the notices of appeal and clarified during oral presentations.

Appeal Points:

1. Appellants dispute the August 30, 2002 decision by the Espanola District Ranger requiring complete livestock removal from the Chicoma allotment by September 15, 2002 due to forage use levels that exceeded acceptable use levels in key areas. Appellants contend "there is no way to determine if this decision is based on the best available scientific information." Appellants have also stated that they were "afforded no opportunity to participate in evaluations other than those by the Range Improvement Task Force (RITF) and should be allowed to see the results of any evaluations to compare with the findings of the RITF.

2. Appellants contend that the Espanola District Ranger did not respond to their concerns regarding "trespass" cattle grazing within the boundaries of the Chicoma allotment.

3. Appellants contend that Espanola District Ranger has not addressed livestock management problems associated with elk populations within the Chicoma allotment. Appellants further contend that "Assessment of the allotment indicates that over 50 percent of the forage is being taken by a resident elk herd that continues to utilize the allotment."

4. Appellants contend that the Espanola District Ranger is responsible for a lack of available water sources within the Chicoma allotment, and that this lack of water sources limited management options in response to drought.

5. Appellants contend that lack of access through the Santa Clara Pueblo restricts their ability to remove livestock from the Chicoma allotment.

6. Appellants contend that the Espanola District Ranger's decision to remove livestock from the allotment does not comply with federal laws, including National Environmental Policy Act and the Small Business Enforcement Fairness Act. Appellants further contend that the decision was made without consideration of the Environmental Justice Regulations (E.O. 12898). Appellants contend that other alternatives should have been considered.

The following are my determinations regarding each of the identified appeal points.

Determinations by Appeal Point:

1. Espanola Ranger District records, including data provided by the Range Improvement Task Force (RITF), indicate that acceptable forage use levels within key areas were exceeded on the Chicoma allotment. The acceptable use levels are based on research, published and unpublished, by faculty at New Mexico State University and other institutions. Espanola Ranger District records provide written and photographic evidence that the appellants were afforded an opportunity to participate in allotment evaluations not related to RITF activities. Those same records provide evidence that appellants did participate in these evaluations.

2. The issuance of Notices of Non Compliance indicates that the Espanola District Ranger did follow administrative procedures in response to excess use of forage on this allotment by livestock permitted to graze on other allotments.

3. Espanola Ranger District records indicate that they did respond to concerns regarding elk population management by initiating discussions with the New Mexico Game and Fish Department to determine the type of action(s) that are appropriate to control elk populations affecting the Chicoma allotment. The appellants did not provide for consideration any science based assessments to support their claims regarding elk use of available forage.

4. The appellants, not the Espanola District Ranger, are responsible for any lack of properly functioning water developments that may exist within the Chicoma allotment. Maintenance of existing developments is a permittee responsibility. The record clearly indicates that existing water developments have not been maintained in fully functioning condition. Additional new water developments should be proposed by the permittees for analysis in conformance with the National Environmental Policy Act (NEPA), preferably during development of the Allotment Management Plan.

5. The validity of this appeal point is questionable, at best. The appellants appear to be able to move their livestock into the allotment without difficulty. Therefore, it should not be unreasonable to expect them to be able to remove their livestock without difficulty. It is the permittee(s) responsibility to secure appropriate access to and from the Chicoma grazing allotment. It is also the permittees responsibility to secure this access in a timely manner. The Espanola District Ranger has gone above and beyond his responsibilities by facilitating communication between the Chicoma permittees and the Santa Clara Pueblo.

6. The grazing permits issued to the appellants contain specific terms and conditions that conform to all applicable laws and regulations. Enforcement of those terms and conditions by the Espanola District Ranger was an administrative action in conformance with Forest Service policies that are themselves in conformance with all applicable laws and regulations. The appellants themselves state that management alternatives were limited by the lack of dependable water sources.

Relief Requested:

Appellants did not request any specific relief from this decision, other than a stay of implementation. The request for a stay was denied.

Appeal Decision

Based on the information in the record for this appeal and the unavailability of any form of relief, I am affirming the decision by the Espanola District Ranger with direction. The Espanola District Ranger is directed to provide the appellants with access to all materials regarding livestock management on the Chicoma allotment.

Appeal Rights

You may file an appeal of this decision with the Regional Forester within 15 days of today's date. If you file this appeal, the review will be limited to the existing record. No additional information will be added to the file.

If you wish to appeal this decision, you must send a Notice of Appeal to Harv Forsgren, Regional Forester, Southwest Region, 333 Broadway Blvd. SE, Albuquerque, New Mexico 87102 with copies to Leonard Atencio, Forest Supervisor, Santa Fe National Forest, 1474 Rodeo Road, P.O. Box 1689, Santa Fe, New Mexico, 87504-1689 and John Miera, District Ranger, Espanola Ranger District, P.O. Box 3307, Fairview Station, 1707 N. Riverside Dr., Espanola, New Mexico, 87533.

If you have any questions regarding this appeal or the appeal process, please contact Barry Imler at the letterhead address, by telephone at (505) 438-7801, or by electronic mail at bimler@fs.fed.us.

Sincerely,

/s/ Gilbert Zepeda (for)
LEONARD ATENCIO
Forest Supervisor

cc: Espanola District Ranger