



United States  
Department of  
Agriculture

Forest  
Service

Santa Fe National Forest

1474 Rodeo Road  
P.O. Box 1689  
Santa Fe, New Mexico 87504-1689  
505-438-7840 FAX 505-438-7834

File Code: 1570-1/2230-3

Date: February 7, 2005

Fidel Eloy Gonzales  
Gonzales Cattle, LLC  
HC70 Box 22A  
Pecos, NM 87552

CERTIFIED MAIL  
7004 1350 0001 5745 3401  
Return Receipt Requested

RE: Appeal Number 05-03-10-0003-A251

Dear Mr. Gonzales:

This letter constitutes my review and decision on the appeal you filed in response to Ranger Reddan's decision to authorize grazing on the Macho cattle and horse allotment.

My review was conducted according to the provisions of the appeal regulations in 36 CFR 251 Subpart C. I have considered the appeal record, federal statutes, policies, and operational procedures set out in the directives system of the USDA Forest Service.

#### **APPEAL POINT**

My review will focus on the appeal point in your November 5, 2004 notice of appeal, subsequent correspondence and your oral presentation.

**Issue:** Appellant disputes the District Ranger's claims that the proposed action and alternatives were developed in consultation with the grazing permittees. The analysis did not consider forage base, water sources, improvement needs or the practicality of instituting a rotational grazing system on the allotment. The costs of meeting the requirements of the decision cannot be recovered.

**Contention:** The District Ranger failed to consult with the current permit holder or consider the permit holders concerns during development of the proposed action and alternatives for grazing management on the Macho allotment.

**Response:** In his responsive statement, Ranger Reddan provided evidence of meetings with the Appellant to discuss these issues on at least four (4) occasions between December 1, 2003 and June 30, 2004.

**Reply to Responsive Statement:** Appellant's reply to the responsive statement indicates that there were discussions regarding management options on the Macho allotment.

**Oral Presentation:** During the oral presentation, Appellant repeatedly stated that the management program identified in Ranger Reddan's decision was the most likely to succeed on the Macho allotment and that this was the management program in effect on the Macho allotment for many years.

I find the District Ranger has complied with Forest Service operational procedures, including consultation with affected permittees during development of the Macho allotment decision.



## **REQUESTED RELIEF**

The Appellant requested transfer of his 16 head of permitted livestock use from the Macho allotment to the Rosilla allotment. This would require waiver or cancellation of his current term grazing permit for the Macho allotment and modification of his current term grazing permit for the Rosilla allotment to allow an increase in permitted use.

The requested relief would require actions that are not associated with the Macho allotment analysis or decision. The action required to satisfy this request, specifically, increasing the number of AUM's permitted on the Rosilla allotment, has not been satisfactorily analyzed through the NEPA process. NEPA analysis regarding grazing authorizations for the Rosilla allotment was completed in 2000. All available term grazing capacity for the Rosilla allotment was allocated during implementation of that decision in 2003.

## **DECISION**

This appeal should have been dismissed on the basis that the requested relief cannot be granted under existing law, fact, or regulation (36 CFR 251.92). However, I chose to continue the process in order to provide review of the Appellants contention that the Deciding Official failed to properly consult with the affected permittees during the NEPA analysis process.

After review of the appeal record, I find that the District Ranger did consult with the affected permittees during development of the Macho allotment grazing decision. The District Ranger's decision is in conformance with applicable laws, regulations, policies and procedures. I find no evidence indicating the District Ranger has acted in an arbitrary or capricious manner. The District Ranger's decision is affirmed.

My decision is subject to further administrative review under 36 CFR 251. Any appeal of this decision to the second level must be fully consistent with 36 CFR 251.90, content of notice of appeal. Pursuant to 36 CFR 251.87(c) (2), "the appeal for a second level of review is filed with the regional forester within 15 days of the first level appeal decision. Upon receiving such a request, the regional forester shall promptly request the first level file from the forest supervisor. The review shall be conducted on the existing record and no additional information will be added to the file."

Appeals must be filed with:

Regional Forester  
Southwestern Region  
333 Broadway SE  
Albuquerque, NM 87102

Sincerely;

/s/ Gilbert Zepeda  
GILBERT ZEPEDA  
Forest Supervisor

cc: Joe Reddan, Berwyn Brown, Constance J Smith