



United States
Department of
Agriculture

Forest
Service

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,File Code: 1570-1/2200
Date: March 2, 2005

Eloy Gonzales
Gonzales Cattle, LLC
HC 70 Box 22-A
Pecos, NM 87552

**CERTIFIED MAIL -
RETURN RECEIPT REQUESTED
7000 2870 0000 1135 4110**

RE: Appeal #05-03-10-0003-A251, Macho Allotment Decision, Pecos Ranger District,
Santa Fe National Forest

Dear Mr. Gonzales:

This letter documents the second-level review decision of the appeal you filed regarding District Ranger Reddan's (Deciding Officer) decision to implement Alternative 3 for management of livestock use on the Macho Allotment. The Deciding Officer's decision is documented in a Decision Notice and Finding of No Significant Impact dated September 24, 2004. Your appeal has been processed under the provisions of 36 CFR 251, subpart C.

BACKGROUND

The Deciding Officer made a decision to implement Alternative 3 for management of livestock use on the Macho Allotment on September 24, 2004.

Your first-level appeal was filed with Forest Supervisor Zepeda on November 5, 2004. On November 17, 2004, Supervisor Zepeda notified you that your appeal was received in a timely manner and denied your request for a stay. On November 19, 2004, I notified you I would not review the first-level Reviewing Officer's denial of your stay request. On December 7, 2004, Supervisor Zepeda scheduled an oral presentation for December 15, 2004.

On December 13, 2004, a copy of the Deciding Officer's written responsive statement was hand-delivered to you. On December 14, 2004, you notified Supervisor Zepeda in writing that you wished to provide a written response to the Deciding Officer's responsive statement. On December 15, 2004, Supervisor Zepeda notified you that you could send him a written reply to the Deciding Officer's responsive statement within 20 days of your receipt of his statement. On December 15, 2004, the oral presentation was rescheduled for January 18, 2005. On December 26, 2004, you provided a written response to the responsive statement. On January 20, 2005, Supervisor Zepeda notified you he had closed the appeal record. On February 7, 2005, Supervisor Zepeda affirmed the Deciding Officer's decision for management of the Macho Allotment.

Your second-level appeal was received in this office on February 17, 2005. On February 23, 2005, I notified you your appeal was filed in a timely manner and that your appeal would be processed under the provisions of 36 CFR 251.87.



POINTS OF APPEAL

The review of your 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 1: The decision requires development of a spring and pipeline and water trough in the Dalton Pasture, development of a well in the Indian Creek Pasture, and construction of approximately 1/4 mile of fence.

Contention: The appellant contends that with only 16 head of permitted livestock, the cost of meeting the requirements of the decision cannot be recovered.

Response: In his responsive statement, the Deciding Officer reiterates the fact that the improvements were planned, in conjunction with the appellant, to be cost effective, while providing for a deferred-rotation grazing strategy. In his responsive statement, the Deciding Officer states that the Forest Service has purchased the drinker, plumbing, and pipe needed to develop the spring in the Dalton Pasture. The appellant would only be furnishing labor to develop the spring. The Deciding Officer estimates labor would amount to 2-3 people for a few days. No equipment would be required other than hand tools.

The Deciding Officer's responsive statement indicates the well in the Indian Creek Pasture was used until the late 1980s as part of a mining operation. The responsive statement also indicates the appellant possesses the generator that powers the wellhead pump and that little to no cost is associated with this development. However, in his written response, the appellant stated he does not have possession of a generator to power the wellhead pump.

Finding: It is unclear from the record if a new generator to power the wellhead pump in the Indian Creek Pasture will need to be purchased. However, Forest Service policy allows for the purchase of a generator from appropriated funds. Another source of funding could be from EQIP money now available from the Natural Resources Conservation Service for improved management of New Mexico rangelands on a cost share basis with Forest Service permittees. In terms of the minimum amount of fence construction proposed, Forest Service policy provides for the purchase of materials by the Government and construction of the fence by the permittee. The record does not support the appellant's contention that his cost of constructing the proposed improvements cannot be recovered.

ISSUE 2: The requirement to rotate cattle within three pastures of the Macho Allotment during a grazing season is unreasonable.

Contention: The appellant contends cattle cannot be driven from one pasture to the next and there are no corrals in Dalton Canyon or Carpenter Ridge to gather cattle for hauling between pastures. The appellant states the use of the allotment is creating a hardship for him and his family.

Response: In his responsive statement, the Deciding Officer states a rotation grazing system is necessary in order to maintain rangeland health. In addition, the Deciding Officer points out that two of the three pastures are accessible by vehicle. The responsive statement further documents that since the third pasture (Carpenter Ridge Pasture) can only be accessed on horseback, the

Forest Service and permittee mitigated this situation by scheduling grazing in the Carpenter Ridge Pasture only two out of ten years. Additionally, the record indicates new facilities will include a new corral (Doc. 1).

Finding: The record documents there are approximately 2,800 acres of capable range in excellent condition for the 16 head of permitted livestock (Docs.1; 6). These factors provided the opportunity to work with the appellant to limit the use of the Carpenter Ridge Pasture. In his responsive statement, the Deciding Officer acknowledges that management of cattle on the Macho Allotment will require the use of horses at times. The record also reflects a new corral will be constructed to facilitate handling of livestock.

Deferred grazing will require one move between pastures during the grazing season eight out of ten years and two moves between pastures during the grazing season two years out of ten. The required pasture moves are not unreasonable over a five-month grazing season.

ISSUE 3: The appellant did not have an opportunity to participate in planning for management of the Macho Allotment.

Contention: The appellant contends he was unable to have an opportunity to discuss the matter in sufficient detail with Forest Service personnel prior to the publication of the decision.

Response: The record documents that on December 2, 2003, the appellant attended a meeting with Forest Service personnel to develop the grazing management strategy for the Macho Allotment. “During this meeting, a three-pasture, deferred rotation grazing strategy, about ¼ mile of fencing, and one well development were proposed and agreed upon. Three springs on Dalton Ridge were identified, with parties agreeing that the best one would be developed. All parties agreed to develop a second spring in the footprint of the Doctor Creek timber sale. Replacing the cattle guard and wing fence on Forest Road 123 was also identified as a need in order to get some use of the Dalton Canyon area.” (Doc. 6)

On March 17, 2004, Forest Service personnel reviewed the proposed action (Alternative 3) with the appellant (Doc. 6).

The record also indicates that during the oral presentation, the appellant repeatedly indicated that the proposed action was reasonable and was in effect the management program on the Macho Allotment for many years (Doc. 12).

Finding: Given the scope and complexity of the analysis, the Deciding Officer appropriately involved the appellant in development of the grazing management strategy for the Macho Allotment. Other than a shift from season-long grazing to deferred grazing, it is apparent there have been no dramatic shifts in the management strategy for the allotment.

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/ Lucia M. Turner
LUCIA M. TURNER
Appeal Reviewing Officer,
Deputy Regional Forester

cc: Mailroom R3 Santa Fe, David M Stewart, Barry Imler, Joe Reddan, Constance J Smith, Brad Ferran